



# **Missouri Department of Natural Resources**

## **Clean Water Commission Water Protection Program**

### **Meeting Minutes**

**July 6, 2005**

# **MISSOURI CLEAN WATER COMMISSION MEETING**

**July 6, 2005**

**Best Western Moberly Inn**

**1200 Highway 24 East**

**Moberly, Missouri**

## **MINUTES**

### Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission  
William A. Easley, Commissioner, Missouri Clean Water Commission  
Paul E. Hauser, Commissioner, Missouri Clean Water Commission  
Kristin M. Perry, Commissioner, Missouri Clean Water Commission  
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission  
Ron Hardecke, Commissioner, Missouri Clean Water Commission

Edward Galbraith, Director of Staff, Missouri Clean Water Commission  
Bill Bryan, Counsel, Missouri Clean Water Commission  
Marlene Kirchner, Secretary, Missouri Clean Water Commission

Leo Alderman, EPA Region 7, Kansas City, Kansas  
Mike Alesandrini, Equilibrium, Inc., French Village, Missouri  
Richard Allwood, City of Maysville, Maysville, Missouri  
Clifford Asberry, The Doe Run Co., Viburnum, Missouri  
Craig Aubuchon, Washington University, St. Louis, Missouri  
Bob Bacon, Environmental Resources Coalition, Jefferson City, Missouri  
George Barbee, CAS Construction, Topeka, Kansas  
Darrell Barber, Missouri Department of Natural Resources, Jefferson City, Missouri  
Stacia Bax, Missouri Department of Natural Resources, Jefferson City, Missouri  
Mark Belding, KOMU TV-8, Columbia, Missouri  
Dorris Bender, City of Independence, Independence, Missouri  
Gerry Boehm, Greenway Network, St. Charles, Missouri  
Harry Bogart, Citizens For Smart Growth, Foristell, Missouri  
Michael Bollinger, Ameren, St. Louis, Missouri  
David Boyt, Neosho, Missouri  
Gary Bruce, Centralia, Missouri  
Robert Brundage, Newman, Comley & Ruth, Jefferson City, Missouri  
Nancy Brunson, Duncan's Point, Shawnee Mission, Kansas  
Tom Burkhart, City of Salisbury, Salisbury, Missouri  
Judy Chapman, Pierce City, Missouri  
Pat Chapman, Pierce City, Missouri  
Randy Clarkson, Bartlett & West Engineers, Jefferson City, Missouri  
Melissa Coleman, EPA Region 7, Kansas City, Kansas  
Jeffrey Corbin, Macon Municipal Utilities, Macon, Missouri  
Aimee Davenport, Missouri Department of Natural Resources, Jefferson City, Missouri

Hilary Davidson, St. Louis, Missouri  
 Chad Davis, Trenton Municipal Utilities, Trenton, Missouri  
 Allen Decker, MRWA, Gray Summit, Missouri  
 John DeLashmit, EPA Region 7, Kansas City, Kansas  
 Kim Dickerson, Associated Electric, Clifton Hill, Missouri  
 Cindy DiStefano, Missouri Department of Conservation, Columbia, Missouri  
 Kit Doyle, Columbia Missourian Newspaper, Columbia, Missouri  
 Nonie Dudley, USDA Rural Development, Columbia, Missouri  
 Tom Engle, Duckett Creek, St. Charles, Missouri  
 Mark Epstein, Pebble Creek, Kansas City, Missouri  
 Douglas Farrow, City of Moberly, Moberly, Missouri  
 Robert Fuerman, Missouri American Water, Chesterfield, Missouri  
 Joel Gambill, City of Columbia, Columbia, Missouri  
 Doug Garrett, Missouri Department of Natural Resources, Jefferson City, Missouri  
 Virginia Garrick, Innsbrook, Missouri  
 William Garrick, Innsbrook, Missouri  
 Jeff Gratzner, Jacobs, St. Louis, Missouri  
 Thomas Gredell, Gredell Engineering, Jefferson City, Missouri  
 Pearl Hankins, Duncan's Point, Kansas City, Missouri  
 Andrew Harris, Gredell Engineering, Kansas City, Missouri  
 Ted Heisel, MO Coalition for the Environment, St. Louis, Missouri  
 Bob Hentges, MPUA/Osage Catfisheries, Jefferson City, Missouri  
 Michael Hollis, MO Rural Water Assoc., Van Buren, Missouri  
 Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri  
 Maryal Hunt, Pierce City, Missouri  
 Terry Hunt, Pierce City, Missouri  
 Matthew Johnson, Washington University, Maplewood, Missouri  
 Jim Kahrs, Osage Catfisheries, Osage Beach, Missouri  
 Duane Kelly, Independence, Missouri  
 Vern Kincheloe, MMU, Macon, Missouri  
 D. Angel Kruzen, Missouri Watershed Coalition, Mountain View, Missouri  
 Mary Lappin, KC Water Services Department, Kansas City, Missouri  
 Richard Laux, Missouri Department of Natural Resources, Jefferson City, Missouri  
 Bonnie Liscek, EPA Region 7, Kansas City, Kansas  
 Maxine Lipeles, Missouri Coalition for the Environment, St. Louis, Missouri  
 John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
 Greg Maloney, Kirksville, Missouri  
 Vernon Maloney, Macon, Missouri  
 Chris Maune, Missouri Department of Natural Resources, Jefferson City, Missouri  
 Cathy McAfee, City of Perry, Perry, Missouri  
 Ken Midkiff, Sierra Club, Columbia, Missouri  
 Kate Miller, Washington University, St. Louis, Missouri  
 James Moore, Jolly Hill Park, Pierce City, Missouri  
 Paul Mueller, Missouri Department of Natural Resources, Troy, Missouri  
 Susan Myers, Urban Areas Coalition, St. Louis, Missouri  
 John Pozzo, Ameren, St. Louis, Missouri

Roger Rector, Macon Municipal Utilities, Macon, Missouri  
 John Reece, Little Blue Valley Sewer District, Independence, Missouri  
 Merl Riley, Huntsville, Missouri  
 Jon Rogers, PWS #1 of Ralls County, Hannibal, Missouri  
 Larry Ruff, Greenway Network, Inc., St. Charles, Missouri  
 Michael Russell, Washington University, St. Louis, Missouri  
 Darl Salisbury, City of Unionville, Unionville, Missouri  
 Wade Sanders, City of Odessa, Odessa, Missouri  
 Cary Sayre, Allstate Consultants, Marceline, Missouri  
 Kurt Schaefer, Missouri Department of Natural Resources, Jefferson City, Missouri  
 Candy Schilling, Missouri Department of Natural Resources, Jefferson City, Missouri  
 Ryan Schuler, Missouri American Water, Chesterfield, Missouri  
 Becky Shannon, Missouri Department of Natural Resources, Jefferson City, Missouri  
 David Shorr, MO Public Utility Alliance, Jefferson City, Missouri  
 Cynthia Smith, Missouri Department of Natural Resources, Jefferson City, Missouri  
 Dennis Stith, Shafer, Kline & Warren, Inc., Macon, Missouri  
 Trent Stober, MEC Water Resources, Inc., Columbia, Missouri  
 Clark Thomas, Columbia, Missouri  
 Steve Townley, Missouri Department of Natural Resources, Jefferson City, Missouri  
 Tom Tunnick, REGFORM, St. Charles, Missouri  
 Richard Tuttle, Alliance Water Resources, Columbia, Missouri  
 Donna Van Otterloo, Citizens Against Local MOARK Expansion, Joplin, Missouri  
 Lee Van Otterloo, Citizens Against Local MOARK Expansion, Joplin, Missouri  
 Kenneth Warren, Livingston County Commission, Chillicothe, Missouri  
 Gary Webb, Ludlow, Missouri  
 Michael Wells, Missouri Department of Natural Resources, Jefferson City, Missouri  
 Mary West, City of Moberly, Moberly, Missouri  
 Ken Woods, Durkin Equipment Co., St. Louis, Missouri

Call to Order/Introductions – Chairman Herrmann called the meeting to order at approximately 9:06 a.m. He introduced Commissioners Easley, Kelly, Hauser, Perry and Hardecke.

Public Hearing – Water Quality Standards Rulemaking – Mr. Phil Schroeder, Chief, Water Quality Monitoring and Assessment, Department of Natural Resources, presented testimony on the proposed rulemaking regarding rules 10 CSR 20-7.015 Effluent Regulations and 10 CSR 20-7.031 Water Quality Standards. The purpose of the public hearing was to provide the department and the public the opportunity to present testimony and to comment on proposed revisions to Water Quality Standards and corresponding Effluent Regulations.

A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, 1101 Riverside Drive, Jefferson City, Missouri.

#### **Approval of May 4, 2005 Clean Water Commission Meeting Minutes**

Chairman Herrmann asked if there were any additions or

corrections to the minutes. Commissioner Perry stated Ms. Cindy DiStefano, Missouri Department of Conservation, would like to have her comments from the May 4 meeting reflected in the minutes regarding the Parkville Variance. Chairman Herrmann entertained a motion to accept the minutes with the revision and enter them into record.

1 COMMISSIONER PERRY: Can I make a motion that we  
2 approve the minutes as amended?  
3 COMMISSIONER HAUSER: Second.  
4 CHAIRMAN HERMANN: Will the Secretary  
5 please call for the vote? Marlene?  
6 MS. KIRCHNER: Commissioner Easley?  
7 COMMISSIONER EASLEY: Yes.  
8 MS. KIRCHNER: Commissioner Hauser?  
9 COMMISSIONER HAUSER: Yes.  
10 MS. KIRCHNER: Commissioner Kelly?  
11 COMMISSIONER KELLY: Yes.  
12 MS. KIRCHNER: Commissioner Perry?  
13 COMMISSIONER PERRY: Yes.  
14 MS. KIRCHNER: Commissioner Hardecke?  
15 COMMISSIONER HARDECKE: Yes.  
16 MS. KIRCHNER: Chairman Hermann?  
17 CHAIRMAN HERMANN: Yes. Did you wish to hear  
18 from Ms. - what's her name?  
19 COMMISSIONER PERRY: No, it was simply to  
20 - no, I'm not asking her to speak or to hear  
21 from her. She made some comments at the time

22 and those comments were not reflected at all  
23 in the minutes and she wanted that position to  
24 be in the record.

1 CHAIRMAN HERMANN: I see, alright. Okay,  
2 moving to Tab Three, we have **Water Quality Rule**  
3 **Implementation**  
4 Issue Number Two. Ed Galbraith will -  
5 MR. GALBRAITH: Thank you, Mr. Chairman. At  
6 the last meeting, I presented two rule implementation  
7 issues. We deferred the second of them to  
8 this meeting. The issue has - it's - it's a  
9 lot of words here, but it basically boils down  
10 to permittees who have applications in place  
11 as of today and who did not, when they were  
12 getting their financing and getting their  
13 plans approved over the last several years  
14 when they did not have a reasonable  
15 expectation that disinfection was going to be  
16 a requirement and this is something that's new  
17 on the horizon for them, but they've already  
18 been proceeding under a set of assumptions and  
19 expectations and, for whatever reason, the  
20 Department cannot issue their permit in a  
21 timely way such that the permit would be  
22 issued after the effective date of the  
23 disinfection rules, those facilities would be,  
perhaps, unfairly jeopardized and have a very

24 short time frame for compliance that they

1 would not otherwise have. They would have had  
2 longer time frame for compliance had the  
3 Department been able to issue the permit in a  
4 timely way. It's a fairly narrow, select  
5 group of permittees, but, for example, the  
6 permit - the permit renewal comes in, you  
7 know, let's say the Department has already  
8 received it. The Department has 180 days to  
9 issue that, but, for whatever reason, they  
10 can't issue it 'til after the effective date  
11 after the rule. This - what this would do  
12 would provide a safe harbor in the rule for  
13 those - for those - for those permittees.  
14 Under the recommended action, there are four  
15 specific items. I'll go over each one with  
16 you briefly. The first action - the first nine H1  
17 - that is the language that was already in -  
18 that is in the draft rule currently and that  
19 is simply a three-year compliance schedule for  
20 permittee - to install disinfection or  
21 demonstrate that this disinfection is not  
22 needed for whatever reason. What I am  
23 suggesting that you consider today is Numbers  
24 Two, Three and Four. This is new. Number Two

1 is for existing permits that have expired  
2 prior to December, 2005, and the permittee has  
3 complied with - basically has sent the  
4 application in a timely way, 180 days prior to  
5 the expiration, and the Department has not  
6 issued the permit in a timely way, through no  
7 fault of the permittee, then that permittee  
8 has until the next five-year renewal to  
9 evaluate their need for disinfection. Number  
10 Two is like it only it applies to permittees  
11 who already have approved construction permits  
12 prior to the end of this year. And Number  
13 Four is the same thing only it applies to  
14 anybody who has submitted a complete  
15 construction permit application at least prior  
16 to 180 days from the end of the year -  
17 basically July 1st - and the Department,  
18 through no fault of the permittee, is not able  
19 to issue the permit in a timely - in that 180  
20 days. This would provide a safe - another  
21 five years - they would have to, again,  
22 evaluate their need for disinfection at the  
23 next permit renewal. I'll be happy to answer  
24 any questions that I can.



1 COMMISSIONER PERRY: I have one - I have one  
2 sort of tangent item. Should the fecal  
3 coliform be to read E-coli? In the fourth  
4 line of Number Two?

5 MR. GALBRAITH: As I - well, that's a good  
6 question. I don't know. Maybe Phil could  
7 help me with that?

8 MR. SCHROEDER: Yes, I think it's bacterial  
9 limits. Bacterial level and limits. That's a  
10 good comment.

11 MR. GALBRAITH: Because, yeah, we're in the -  
12 sort of the transitional stage here.

13 COMMISSIONER PERRY: If - if this would be  
14 part of the rule, right?

15 MR. GALBRAITH: Correct.

16 COMMISSIONER PERRY: And the rule has that  
17 change in it, right?

18 MR. SCHROEDER: Well, we're offering E-coli  
19 water quality standards but as someone mentioned during  
20 testimony, we're not offering a fecal  
21 coliform, E-coli effluent limitation. That will  
22 come in our next round of water quality standards revisions  
23 So technically, this is correct.  
24

1 COMMISSIONER PERRY: Mm-hmm.

2 MR. SCHROEDER: It complies with the way we've written the  
3 rule, but to be safe, I think we ought to just  
4 say bacterial effluent limitations.

5 CHAIRMAN HERMANN: Anything else of Mr.  
6 Galbraith right now?

7 MR. GALBRAITH: I believe there may be others  
8 who wish to speak on this issue.

9 CHAIRMAN HERMANN: Yes, we have a card from  
10 John LODDERHOSE, Metropolitan St. Louis  
11 Sewer District.

12 MR. LODDERHOSE: Thank you, Chairman Hermann.  
13 I have Appearance of Written Comments on this  
14 issue. I'm John Lodderhose with Metropolitan  
15 St. Louis Sewer District and I'm here today  
16 representing MSD and Urban Areas Coalition on  
17 this proposal by Ed Galbraith and we would  
18 first like to thank him very much for looking  
19 into the future and seeing the problems with  
20 these four or five - four areas that he's  
21 identified, which permits are in transition  
22 that will really cause a hardship. And  
23 actually MSD falls into all four categories.  
24 We have four expired permits. We have one

1       that all - that has already submitted a  
2       construction application. We have two more  
3       construction applications going in later this  
4       year and we're just finishing completion of a  
5       new treatment plant - a lower Meramec  
6       treatment plant, which we're spending two  
7       hundred million dollars on that construction  
8       and with an outfall going into the Mississippi  
9       River, that would have been considered a  
10      non-compliance on the day it started  
11      discharging because of the way the current  
12      language reads in the regulations. So, it's  
13      nice of Ed to think that that's not really a  
14      fair situation and something needs to be done.  
15      We're also in the process of conducting a Use  
16      Attainability Analysis and water quality  
17      studies to determine if disinfection is  
18      needed. And until those studies are done, we  
19      really won't know exactly what we'll have to  
20      comply with and we're talking about tens of  
21      millions of dollars, if not hundreds of  
22      millions of dollars to comply with the  
23      disinfection requirement. So, we really need  
24      to resolve those issues before we proceed on

1       with the funding, the design, and not to  
2       mention the construction of disinfection  
3       facility so, certainly, we need some relief  
4       there. We do offer three comments on Ed's  
5       proposal here that we thought would improve  
6       the likelihood of being able to comply with  
7       the implementation schedule and they're  
8       outlined in the second paragraph of my  
9       comments there. And the first one is that Ed  
10      has specified the cut-off date as December  
11      31st of 2005 and we would recommend that this  
12      be changed to April 30th of 2006, which will  
13      be the effective date of the regulation. And  
14      that's consistent with how the regulations are  
15      written. You have to be in compliance on or  
16      after that effective date. Number Two is that  
17      for his recommendations Two, Three and Four,  
18      that it be specified that the permit that's  
19      issued should be a five-years in term. That  
20      would just be a point of clarification. And  
21      then, finally, on Recommendation Number Four,  
22      he suggested that the construction permits be  
23      in 180 days before the cut-off date. We would  
24      prefer that to actually accept construction

1       permits up to the April 30th, 2006 date. So,  
2       basically, the regulations for implementation  
3       that we would suggest is if you'd submitted  
4       either a construction permit or an operating  
5       permit prior to April 30th of 2006, then you'd  
6       get your first permit issuance based on the  
7       old effluent regulations and then you can have  
8       a three-year compliance schedule on top of  
9       that. And while I'm here, I thought I'd also  
10      put in a plug for one of the comments that was  
11      made by the Urban Areas Coalition on the - the  
12      compliance schedule that's in the water  
13      quality standards. Right now, that is very  
14      restrictive, also. That requires a three-year  
15      compliance schedule, which is, I think, part  
16      of the reason that we had to revise this part  
17      of the regulation, too. If that could be  
18      revised and extended to five years, that would  
19      also help the situation. That's all I have.  
20      I'd be glad to entertain any questions.

21      CHAIRMAN HERMANN: Your - basically, your  
22      recommendation would be to change the December  
23      31st, 2005, to April 30th --  
24      MR. LODDERHOSE: 2006.

1 CHAIRMAN HERMANN: 2006 in Paragraphs One,  
2 Two, Three and Four?

3 MR. LODDERHOSE: That's correct and then eliminate that  
4 180-day requirement in Number Four.

5 CHAIRMAN HERMANN: Do you have any reaction to  
6 that, Ed?

7 MR. GALBRAITH: I guess I do have a - do have  
8 a concern about it to the extent that, you  
9 know, the way it's - the way it's crafted now,  
10 it's really targeted pretty narrowly to  
11 permittees and who - who really didn't have a  
12 reasonable expectation of - of knowing this  
13 was coming and I do - I am concerned that if  
14 we - if we make that change, we'll basically  
15 be saying, announcing, that we have three more  
16 months to get your application in and I - I  
17 can hear the beep-beep-beep of the dump truck  
18 backing up to the door of my office or Peter's  
19 office with - with applications good, bad and  
20 otherwise. As it's structured now, it's -  
21 it's - anything that's in the door today and -  
22 and it doesn't provide for any extra - extra  
23 time and - and I guess I'm also concerned  
24 about it from just a opening up the window too

1 wide and then proof ability of the rule, as  
2 well. Although I haven't really discussed  
3 that with EPA. So, John and I discussed this  
4 briefly. But we didn't really have a chance  
5 to sit down and really hash it out, so I  
6 apologize for that.

7 CHAIRMAN HERMANN: I guess your point, John,  
8 is that the rules are not effective until  
9 April 30th?

10 MR. LODDERHOSE: That's correct, yes.

11 CHAIRMAN HERMANN: Therefore, the variances  
12 would not be applicable until April 30th.

13 MR. LODDERHOSE: And that would probably be  
14 another alternative to go with the variance  
15 route, but if we can do it with just stating  
16 what the conditions would be in the ??? as  
17 probably a cleaner way of doing it.

18 MR. GALBRAITH: And I - yeah, I think that's a  
19 good point. Even without this language, we  
20 can always, believe, do this on a variance  
21 basis for any permit application. The purpose  
22 of the rule was 1) to provide a, sort of a  
23 confidence of a safe harbor and also to reduce  
24 the amount of issues to - that would have to

1           come before the Commission.

2           COMMISSIONER PERRY:   How many permits are we  
3           talking about between December 31st and April?

4           MR. LODDERHOSE:   Well, MSD has two  
5           construction permit applications that we're  
6           gonna submit by the end of the year, which  
7           would fall outside of the 180-day lead time  
8           that Ed's recommended.   So, that would be two  
9           plants that would begin construction next year  
10          that would - when as soon as they finish  
11          construction, they'd have to be in compliance,  
12          which will be under a three-year period.

13          COMMISSIONER PERRY:   Ed, I'd like to hear your  
14          comments about the - adding the part that it's  
15          a five-year permit.

16          MR. GALBRAITH:   I - I don't see any problem  
17          with that.   I think that just clarifies a  
18          five-year.

19          COMMISSIONER HAUSER:   I have - went on a tour  
20          yesterday.   I've been looking at how difficult  
21          it is to make these type of improvements.   I  
22          think the five years is appropriate to - .

23          CHAIRMAN HERMANN:   I don't want to make any improvement to  
24          finance them.



1 COMMISSIONER HAUSER: Yes.

2 CHAIRMAN HERMANN: Anything else, John?

3 MR. LODDERHOSE: No, that was it. Thank you.

4 CHAIRMAN HERMANN: I think Mr. Alderman, EPA, has a  
5 request to speak to us on this matter.

6 MR. LEO ALDERMAN: Thank you, Mr. Commissioner. I  
7 just want to say that I haven't had a chance  
8 to look at the - at the proposal so my comment  
9 only relates to the version that I heard here  
10 today and that's to deal more with the method  
11 of dealing with the situation and I fully do  
12 appreciate the fact that there are going to be  
13 permits that are in a particular status and  
14 how the new rules, assuming they - they would  
15 be finalized, would impact the facilities.  
16 And as far as the method, where - where the  
17 Department is considering a time frame beyond  
18 the permit, in other words, beyond the five  
19 years, we would strongly suggest consideration  
20 of an enforcement order and the reason being  
21 is it's very difficult, if not impossible, to  
22 enforce a permit sequentially to other  
23 permits. Also, if the intention is is gaining  
24 compliance within a permit period, that could

1           be placed in the permit. And - and would  
2           suggest that rather than putting - by doing  
3           this by rule and giving it carte blanche  
4           variance or delay in a particular rule, but do  
5           that delay and do it under an enforcement -  
6           under a schedule, which can be enforceable and  
7           that is what our recommendation would be. Did  
8           I make - did I make it clear?

9           COMMISSIONER PERRY: If this is part of the  
10          rule, it would be part of the permit.

11         MR. ALDERMAN: Um -

12         COMMISSIONER PERRY: Would it not?

13         MR. ALDERMAN: Well, it - it could be if  
14         you're looking for a delay beyond the permit  
15         period - outside of the permit, it's - it just  
16         would not be enforceable.

17         COMMISSIONER PERRY: Okay, but aren't we  
18         asking for a three-year period to comply and a  
19         five-year permit?

20         MR. GALBRAITH: Yeah, basically what we're  
21         saying is for these permits you get - you  
22         would actually wait until the next permit  
23         cycle, which is five years, and then you would  
24         have a three-year compliance.

1 MR. ALDERMAN: So, really, you could be in the  
2 nine - you could be in the theoretically nine  
3 years and not have a control mechanism or if  
4 you put it in this permit that's coming up and  
5 put a schedule in there - in this permit or in  
6 an order, if it crosses into a new permit  
7 cycle. That is - we've discussed this with  
8 other states, too, and this is a - it's been  
9 our position on how to deal with these  
10 situations.

11 COMMISSIONER PERRY: Can I --

12 MR. ALDERMAN: And again, I'm doing this from  
13 the first time - this is the first time I've  
14 really heard this.

15 COMMISSIONER PERRY: You're proposing we put  
16 in the permit a compliance schedule that's  
17 beyond the life of the permit?

18 MR. ALDERMAN: Right. Or - or - I'm sorry -  
19 in an order - in an order outside of the  
20 permit. If you're going to stay within a  
21 permit cycle, it can go in the permit. If  
22 you're going to go into a second or a third  
23 permit cycle, it needs to be in an - in an  
24 order, which is enforceable. It will have a

1           schedule written right in it. And it isn't --  
2           END OF TAPE TWO - SIDE A  
3           TAPE TWO - SIDE B  
4           and - again, it's an enforcement order. Other  
5           words, you may set the year 2011 as a date to  
6           comply and you will put - maybe even interim  
7           milestones in there. Could be - I'm not  
8           saying it has to. Could have interim  
9           milestones in there with an expectation that  
10          those milestones will be met and the ultimate  
11          compliance date will be met and those are  
12          under an enforcement order - forcible order.  
13          COMMISSIONER PERRY: Alright. Okay. And  
14          the enforcement order - that gets back to my  
15          question. If it's not based on some sort of  
16          rule, don't they need that to void it being  
17          arbitrary and capricious?  
18          MR. ALDERMAN: No, it could just be - come up  
19          as part of the permit requirements. We  
20          wouldn't look at it that way. I don't know  
21          how the State - when in implementing their  
22          laws, but --  
23          MR. GALBRAITH: Well, certainly the  
24          more - the more things are lined out in the

1 rules, it does reduce the opportunities for us

2 to --

3 MR. ALDERMAN: Putting that --

4 MR. GALBRAITH: Being seen as arbitrary

5 and capricious.

6 MR. ALDERMAN: Yeah, but putting the delay

7 times in there is really what causes concern.

8 CHAIRMAN HERRMANN: What's the intent of

9 this? I mean intent, in my mind, is to tell

10 an applicant, "Okay, you're talking about

11 compliance schedule, okay, on whatever date,

12 you will comply." But you're not giving -

13 giving him any room to say --

14 MR. ALDERMAN: That's negotiated.

15 CHAIRMAN HERRMANN: where's your variance?

16 MR. ALDERMAN: That's a negotiated agreement.

17 CHAIRMAN HERRMANN: Where's your variance

18 that says you don't have to do this?

19 MR. ALDERMAN: That would be the negotiable

20 order, which would - which would allow delayed

21 implementation of it. In other words, the

22 variance would be built in - if you want to

23 call it variance - it would be built into the

24 order. But actually it would be an

1           understanding between both the facility and  
2           the Missouri Department of Natural Resources  
3           that this is the schedule where you're  
4           expected to be in compliance and it could -  
5           again, be over a couple of cycles.

6           COMMISSIONER HAUSER:  So you recommend doing  
7           all these by variance?

8           MR. ALDERMAN:  Well, variance - it's an order  
9           --

10          COMMISSIONER PERRY:  All by order.

11          MR. ALDERMAN:  It's really the order, not by  
12          variance.

13          COMMISSIONER HAUSER:  Looking at them each  
14          individually?

15          MR. ALDERMAN:  Yes.

16          COMMISSIONER PERRY:  This rule, simply then,  
17          doesn't say that it's available to those  
18          who fall into this little category.

19          MR. ALDERMAN:  Yeah, see, and I don't know  
20          what the rule says.  I haven't seen it.

21          MR. ALDERMAN:  That's a little disadvantage  
22          there.

1 MR. BILL BRYAN: My recommendation on  
2 this initially was very similar to this that  
3 we look at each one on a case-by-case basis.  
4 Allow the Department and staff to exercise  
5 their best professional judgment. This plan  
6 may need ten years so it goes into permit;  
7 this one may need six years so we need some  
8 other enforcement tool beyond the permit,  
9 which normally lasts five years to ensure that  
10 schedules comply with and that the upgrade is  
11 made in a timely fashion. The - there's a  
12 question about the method. We think that  
13 there is a litigation risk if we proceed in a  
14 different way. Maybe Deb or I will look at  
15 this and concerned if we issue permits that do  
16 not require compliance with the new effluent  
17 limits or new water quality standards for more  
18 than the length of that permit and there's no  
19 enforceable order in place, then that would be  
20 a litigation risk for the Commission,  
21 for the Department. In addition, this is  
22 essentially a comment on the rule. So, I  
23 think that you need to take this into  
24 consideration with all the other comments

1           we're getting on the rule to make the decision  
2           - to finalize the rule (crowd noise).

3           CHAIRMAN HERMANN:   John?

4           MR. LODDERHOSE:   I think Bill and Leo have  
5           both made some pretty good points and some  
6           concerns that I had also.   Maybe a compromise  
7           that could satisfy all the concerns would be  
8           to first revise the check - section of Water  
9           Quality Standards Section 10, which outlines  
10          how long a compliance schedule can be.   Change  
11          that from three to five years, then you can  
12          legally issue a five-year permit with the  
13          five-year compliance schedule.   It satisfies  
14          extended compliance schedules outside the term  
15          of the permit, but we would then, you know,  
16          also recommend that, you know, the cut-off  
17          date should be that April 30th date.   But -  
18          maybe Bill could address if that would satisfy  
19          his legal concerns on that issue.

20          MR. GALBRAITH:   So would that only apply to  
21          the facilities who - that we're describing  
22          here?   That wouldn't be a cart - that  
23          wouldn't be five across the board?   It would  
24          just be for the - the - the permittees that



1 are sort of caught in this particular --

2 MR. LODDERHOSE: Right. It would be for - the  
3 facilities that are currently under  
4 construction are ones that are applying for  
5 either an operating permit or construction  
6 permit for up to April 30th.

7 MR. GALBRAITH: Okay.

8 MR. LODDERHOSE: Then their - then their first  
9 permit that you would issue - their first  
10 operating permit after the effective date  
11 would be for five-year term and it would have  
12 a five-year compliance schedule in compliance  
13 with the Water Quality Standards, which would  
14 say - it would allow up to a five-year  
15 compliance schedule.

16 COMMISSIONER PERRY: But that does allow  
17 anybody in this - that falls in this category  
18 would be allowed up to a five-year? Whether  
19 they needed it or not?

20 MR. BRYAN: Well, it would depend on the  
21 precise language and how they wrote it.

22 COMMISSIONER PERRY: As up to --

23 MR. BRYAN: That would still present the  
24 problem of if you have the schedule - a

1 particular plan where the upgrading may  
2 reasonably take longer than five years to do  
3 COMMISSIONER PERRY. 1: That would then qualify  
4 for either an order or a variance, but it  
5 would limit that number, wouldn't it?  
6 MR. BRYAN: That's right.  
7 COMMISSIONER PERRY: This would catch most?  
8 MR. GALBRAITH: I believe so.  
9 COMMISSIONER PERRY1: My thought is anything  
10 that we could make less arbitrary. If we went  
11 completely case-by-case, then, you know, it -  
12 it does look arbitrary. Well, this one looks  
13 like it will take six years; this one looks  
14 like it takes two years. You know, and that's  
15 why I see the advantage in something like  
16 this. The disadvantages also. Most  
17 particular cases but if there aren't too many  
18 of them.  
19 CHAIRMAN HERMANN: Well, then your - your  
20 recommendation, uh, Mr. Bryan, is that we  
21 consider this as a comment relative to the  
22 public hearing?  
23 MR. BRYAN: Right. I think if you have some  
24 direction for the staff, it would be appropriate to give  
25 that to Ed, but  
  
1 before you say, "this is what the  
2 rule's going to be," we've got a lot of other

3 comment before we get there.

4 COMMISSIONER PERRY: So does that mean this  
5 is - we just missed a comment period here?

6 MR. GALBRAITH: No, we're okay.

7 MR. BRYAN: We're okay. The comment period  
8 goes on until July 14th. This - this was not  
9 represented here in the public hearing, but it  
10 is a comment on the rule and getting into the record  
11 -

12 COMMISSIONER PERRY. 1: So do we need to direct  
13 staff to submit it as a comment?

14 MR. BRYAN: I think it's that's been done we can get  
15 it the record. We'll develop a record. Because this  
16 rulemaking is done based on the record as a whole.  
17 This will be included in that record in the event  
18 there will be a challenge.

19 COMMISSIONER PERRY: So, really, no actions  
20 required of us?

21 MR. BRYAN: If you have some direction - if  
22 you think you want Ed to take a look at  
23 something else, you can do that. You have  
24 fourteen days to get those comments made.

1 CHAIRMAN HERMANN: Alright. We won't need any  
2 - this - this --

3 MR. BRYAN: What I'm getting at - it would be  
4 premature to say, "this is what we're going to  
5 do and this is the rule," and not change our  
6 mind. If you have direction - if you want Ed's  
7 staff to look at a different thing or think  
8 - he's on the right target subject to getting  
9 further comments, that's fine.

10 COMMISSIONER PERRY: I would be interested  
11 in having you draft that, but I'd also like  
12 you to consider the idea - as an order either  
13 being a substitute for this rule or an  
14 order being capable of taking care of those  
15 cases where this would not meet the needs and,  
16 finally, to investigate what you think - what  
17 the Department thinks - extending these to be  
18 five-year permits.

19 MR. GALBRAITH: Yeah, the five-year permits  
20 not a - not an issue. It's the five-year -  
21 extending it from three to five-year as a  
22 schedule for compliance

23 FEMALE SPEAKER NO. 1: Oh, to comply --

24 MR. GALBRAITH: for disinfection. That would

1           be to - I think that was what John was  
2           specifically --  
3           COMMISSIONER PERRY: Well, I guess I want to  
4           know that - that and what would be the harm.  
5           MR. GALBRAITH: Okay. Alright.  
6           COMMISSIONER PERRY: That's just a direction  
7           so we don't have to vote on it, do we?  
8           MR. GALBRAITH. I don't - no. No. I'll take  
9           that as - as - you know, your direction to  
10          look into that further and - and --  
11          CHAIRMAN HERMANN: That will be part of our  
12          deliberations --  
13          COMMISSIONER PERRY: And finally, I have one  
14          -  
15          CHAIRMAN HERMANN: address all copies --  
16          COMMISSIONER PERRY: other concern. Is this  
17          little phrase that says "through no fault of  
18          the permittee - permittee." Is that going to  
19          cause us any trouble?  
20          MR. BRYAN: Probably. Another good answer is, it depends.  
21          COMMISSIONER PERRY: One that I am quite  
22          familiar with.  
23          MR. Bryan: I can certainly envision things  
24          where that would be litigated and whether something was

1 at fault of the permittee or the fault of the  
2 Department or the fault of the Attorney General's Office  
3 I expect some litigation  
4 on that.

5 COMMISSIONER PERRY: But your thought though be that  
6 it should remain in there?

7 MR. BRYAN: Yeah, I think it's one of those  
8 things that's ongoing.

9 There's going to be a case where that (off  
10 microphone) where it makes sense and it won't  
11 be (off microphone). It thinks it fine though.

12 CHAIRMAN HERMANN: Okay, Ed. We'll break for  
13 lunch. (Crowd noise).

14 COMMISSIONER PERRY: Well, now, since nobody  
15 wants to listen to my motion, I move that the  
16 Clean Water - Clean Water Commission go into  
17 closed session to discuss legal, confidential  
18 or privileged matters under Section 610.021  
19 Subsection 13, thirteen and fourteen,  
20 effecting personnel actions, personnel records  
21 or applications or records under those  
22 subsections, which are otherwise protected  
23 from disclosure by law. Got a second?

24 CHAIRMAN HERMANN: Got a second? Marlene?

1           Call for the vote, please.

2           MS. KIRCHNER: Commissioner Hauser?

3           COMMISSIONER HAUSER: Yes.

4           MS. KIRCHNER: Commissioner Kelly?

5           COMMISSIONER KELLY: Yes.

6           MS. KIRCHNER: Commissioner Perry?

7           COMMISSIONER PERRY: Yes.

8           MS. KIRCHNER: Commissioner Hardecke?

9           COMMISSIONER HARDECKE: Yes.

10          MS. KIRCHNER: Commissioner Easley?

11          COMMISSIONER EASLEY: Yes.

12          MS. KIRCHNER: Commissioner Hauser?

13          COMMISSIONER HAUSER: Yes.

14          MS. KIRCHNER: Chairman Hermann?

15          CHAIRMAN HERMANN: Yes. There are some people

16          who have traveled a considerable distance to

17          get here and so we're going to diverse from

18          the normal agenda items and go down to the

19          **Legal category** and get Bill Bryan to handle a

20          couple of matters in his review.

21          MR. BRYAN: I just have some changes in the

22          standard forms in Conti Group appeal (**Sierra Club v. PSF**)

23          Company's appeal. The parties to that have

24          all stipulated to the dismissal of that appeal

1 with prejudice as a - thirteen permits were  
2 under appeal. Since the parties have all  
3 stipulated to that voluntary dismissal,  
4 there's no need for you to take any action on  
5 it. That case is over. On Tab Number  
6 Eighteen, **Duncan's Point**, there's a  
7 recommended order issued by the Hearing  
8 Officer and today, we have a - a request to  
9 continue that hearing from Mrs. Brunson on  
10 behalf of herself and the - the homeowners she  
11 represents. Her - the lawyer for the Home  
12 Owners Association could not be here because  
13 he's in trial and they object because there  
14 was an insufficient notice of the hearing and  
15 - and from their perspective. And the  
16 developer is represented by Counsel here today  
17 who's traveled to be here as well. And he -  
18 he prefers that the hearing proceed as  
19 scheduled because he is here to go forward, so  
20 you can either elect to grant or deny the  
21 continuance or to hear - give the parties a  
22 few minutes to be heard on the - on the merits  
23 of the underlying decision or you can put it  
24 off 'til your September meeting. And that's -



1           that's up to you how you want to proceed.

2           CHAIRMAN HERMANN: Have any questions of Mr.  
3           Bryan?

4           COMMISSIONER PERRY: Is there further action  
5           here? Is there further action pending in this  
6           case that would be brought up at a later date?

7           MR. BRYAN: Well, there is a - another -  
8           another appeal for which I understand the  
9           decision was - the recommended decision was  
10          issued yesterday. And so that will come back  
11          to this Commission.

12          COMMISSIONER PERRY: So we'll have to  
13          discuss that at that time, right?

14          MR. BRYAN: Right. That will come up --

15          COMMISSIONER PERRY: So that would come up  
16          at the next meeting?

17          MR. BRYAN: That's my understanding.

18          COMMISSIONER PERRY: And there's a person  
19          here not represented by Counsel today and the  
20          other Counsel would have to be here at the  
21          next meeting, too, right? Both?

22          MR. BRYAN: I believe that's the case.

23          **COMMISSIONER PERRY: So I move that we wait**  
24          **and hear it all at the same time next time.**

1 COMMISSIONER KELLY: Second the motion.

2 CHAIRMAN HERMANN: Any discussion? Made and

3 seconded. Please call for the vote, Marlene.

4 MS. KIRCHNER: Commissioner Perry?

5 COMMISSIONER PERRY: Yes.

6 MS. KIRCHNER: Commissioner Hardecke?

7 COMMISSIONER HARDECKE: Yes.

8 MS. KIRCHNER: Commissioner Easley?

9 COMMISSIONER EASLEY: Yes.

10 MS. KIRCHNER: Commissioner Hauser?

11 COMMISSIONER HAUSER: Yes.

12 MS. KIRCHNER: Commissioner Kelly?

13 COMMISSIONER KELLY: Yes.

14 MS. KIRCHNER: Chairman Hermann?

15 CHAIRMAN HERMANN: Yes. That will be during

16 the September meeting in St. Louis. Okay?

17 And hold off on the rest of those, Bill?

18 MR. BRYAN: Yes.

19 CHAIRMAN HERMANN: Okay, that brings us down

20 to Tab Number Four - **Application of Pesticides**

21 **to Waters in the State, in compliance with the**

22 **Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).**

23 MR. GALBRAITH: This, I'm happy to

24 say, is not a hot issue. But one where we're

1       trying to get out in front of before it does  
2       become a hot issue. What brought it to my  
3       attention was that we had staff giving  
4       somewhat conflicting opinions on whether Clean  
5       Water Permits were required in the case of  
6       application of pesticides in a manner that is  
7       compliant with the Federal FIFRA. I've included  
8       in here a recent - February 2005 - recent  
9       statement by EPA regarding this where they  
10      clearly say that under the Clean Water Act,  
11      this activity would be - it is considered  
12      excluded under - under from - from NPDES  
13      discharge permitting - from clean water  
14      permitting. The - the - the way they got  
15      there was a little - doesn't fit the Missouri  
16      statutes. There's not a one-for-one match-up  
17      in the way the statutes are constructed, so  
18      what I'm asking the Commission to do today is  
19      direct staff to - to review this in light of  
20      state requirements and make a recommendation  
21      on - on - on this matter, but in the interim,  
22      we do need a policy to be able to provide  
23      consistent guidance to people who do ask us  
24      about this matter. And so there's a memo that

1 I would like to approve. It's a memo from me  
2 to Water Staff directing them that for the  
3 time being, we will not require discharge  
4 permits for pesticide application provided and  
5 there's several provisos. The main one being  
6 that the - the application has to be compliant  
7 with label directions and Federal pesticide  
8 Law.

9 COMMISSIONER HAUSER: I move we accept the memo  
10 - memorandum while staff further studies this  
11 issue.

12 COMMISSIONER HARDECKE: Second.

13 CHAIRMAN HERMANN: Moved and seconded.  
14 Discussion? Please call for the vote,  
15 Marlene.

16 MS. KIRCHNER: Commissioner Perry?

17 COMMISSIONER PERRY: Yes.

18 MS. KIRCHNER: Commissioner Hardecke?

19 COMMISSIONER HARDECKE: Yes.

20 MS. KIRCHNER: Commissioner Easley?

21 COMMISSIONER EASLEY: Yes.

22 MS. KIRCHNER: Commissioner Hauser?

23 COMMISSIONER HAUSER: Yes.

24 MS. KIRCHNER: Commissioner Kelly?

1           **COMMISSIONER KELLY: Yes.**

2           **MS. KIRCHNER: Chairman Hermann?**

3           **CHAIRMAN HERMANN: Yes.**

4           Moving down to Variances, Tab Five, **City of**  
5           **Macon, Variance Request.** Richard Laux presents  
6           the staff recommendation.

7           MR. LAUX: Good afternoon.

8           CHAIRMAN HERMANN: Good afternoon.

9           MR. LAUX: In your packet is the staff  
10          recommendation on the City of Macon. They  
11          have requested the variance from the  
12          Conditions in their permit that require  
13          effluent limitations on their combined sewer  
14          overflows. This is similar to the Moberly  
15          request from last month. The City has been  
16          unable to meet the effluent limits contained  
17          in the permit and, like Moberly, would like to  
18          address CSO issues under a long-term CSO  
19          control plan. The City has received an  
20          abatement order from the Department regarding  
21          CSO issues and our recommendation is in  
22          accordance with the requirements of that  
23          abatement order, so there are several  
24          conditions that are part of the staff

1            recommendation.  So we're recommending that  
2            the Commission grant preliminary approval  
3            today with those conditions and then direct  
4            staff to public notice of the Commission's  
5            intention to approve at the next Commission  
6            meeting.  And I believe there are  
7            representatives of the City here today.

8            CHAIRMAN HERMANN:  Thank you.  Any questions  
9            of Mr. Laux?  We have a card from Dennis Stith,  
10           Shafer, Kline and Warren.

11           MR. STITH:  Thank you for your time today.  
12           I'll take just a moment to introduce the  
13           projects that we have going on for your  
14           information that are related to this combined  
15           sewer overflow project.  Macon is a city just  
16           north of here - about twenty-five miles from  
17           here - population of about fifty-five hundred  
18           people.  We have inherited a combined sewer  
19           system there that was built back in the 1880's  
20           and it serves the downtown businesses and  
21           older residential areas.  The City has studied  
22           their wastewater needs in total, including  
23           the combined sewer overflow situation, as well  
24           as the wastewater treatment facilities.  The

1       total project would be in the fifteen to  
2       sixteen million dollar range if we were to  
3       take on this project all at once and financing  
4       a project like this, in the end, would create  
5       some severe financial and economic impacts.  
6       The City has, to this point, already  
7       implemented a nine-minimum - excuse me - a  
8       nine-minimum controls and DNR's found their  
9       nine-minimum control approach to be acceptable  
10      as of January 2002. Several of the items on  
11      that are complete and - and others are  
12      ongoing. In accordance with the - the current  
13      long-term control plan that they have, the  
14      City has developed a three-phase approach to  
15      constructing improvements. The first phase is  
16      a partial sewer separation and that's about a  
17      1.1 million dollar project. And that will  
18      remove quite a bit of the waste load from the  
19      combined sewers including the waste from the  
20      Conagra facility, water plant sludge and about  
21      seventeen hundred customers within the system.  
22      About seven hundred customers will continue  
23      to contribute waste to the - to the main  
24      combined sewer overflow. This Phase One that

1           is about ready to be submitted to DNR for  
2           construction permit includes with it some  
3           in-stream post-construction monitoring that  
4           will then provide direction for the future  
5           phases of work, which the City will need to  
6           do. And that - by doing so, it will ensure  
7           that the City resources are spent in a very  
8           cost effective manner in the future and this  
9           variance request that is before you today  
10          supports the City's efforts to achieve these  
11          goals and implement the project, the  
12          nine-minimum controls and a cost effective  
13          approach to future work. Thank you.

14       CHAIRMAN HERMANN: Thank you, sir. Mr.  
15       Stober?

16       MR. STOBBER: Yes, sir. Our firm has been  
17       retained to aid the City on several water  
18       quality issues. One of these is the combined  
19       sewer overflow issue and - and direction  
20       towards in-stream monitoring and assessment.  
21       As Dennis brought up, the preliminary  
22       calculations on - on - on these various  
23       aspects of the facility's plan - long-term  
24       control plan would put the City in substantial



1       - or, I'm sorry, significant and widespread  
2       social and economic impacts, so it's obviously  
3       vital to direct those limited resources as  
4       best we can through these monitoring efforts.  
5       We appreciate the staff's review of this.  
6       We'd just like to clarify some of the staff  
7       recommendations. Our feeling is, with respect  
8       to in-stream monitoring, that should be  
9       included in the City's long-term control plan  
10      rather than the NPDES permit. And the reason  
11      for that would be to allow us to continually  
12      modify that monitoring plan as we go and as -  
13      as the data are available and assessed to - to  
14      just kind of tailor the monitoring program as  
15      we go along. That would be very difficult to  
16      do within the context of an NPDES permit and -  
17      and my feeling would be that would require  
18      modifications to the permit whenever we needed  
19      to monitor or change the in-stream monitoring  
20      components, as well as characterization of the  
21      CSO's as well. So, we would recommend that  
22      the in-stream monitoring provisions be  
23      referenced - not excluded in the permit, but -  
24      but - but then just reference the City's

1       long-term control plan. We'd also like to  
2       just clarify the - the permit term that we're  
3       - that's under consideration. The City is  
4       currently operating under an expired permit.  
5       If - if - which expired in February 2003.  
6       We'd like to request a five-year variance from  
7       - from the point that this - this is approved.  
8       If so, rather than hinging back to the date  
9       of the previous - previously expired permit.  
10      Lastly, we have a - the City has a variance  
11      request, as well, on the ammonia limitations  
12      that were - were - were proposed to be set  
13      based on the existing water quality criteria.  
14      We've had a variance request in to utilize the  
15      proposed criteria by DNR. They're based on  
16      the 1999 EPA criteria and with that, we would  
17      like to have this permit action, obviously,  
18      happen after a decision's made on that  
19      variance as well. Are there any questions?  
20      CHAIRMAN HERMANN: Staff reaction? Ed - how  
21      about you? Five-year extension?  
22      MR. LAUX: The problem with that approach is  
23      that - then there would be a period of time in  
24      the computer system as well as in the file,

1       where it appears if they didn't have a valid  
2       permit. Hence, the general practices to issue  
3       a permit five years from the previous  
4       expiration date to more or less indicate that  
5       they have been permitted through that whole  
6       period of time. I don't think there's  
7       anything to preclude us from issuing a permit  
8       for five years, but it will leave this period  
9       of time when the status of their permit would  
10      appear to be questionable at least. So,  
11      that's why we normally don't do it that way.  
12      MR. STOBBER: Can I comment? We, again, would  
13      assert that - that it would be preferable to  
14      have the five-year permit period. There's  
15      basis in the - in the Federal Clean Water Act  
16      and - and the Federal Regulations that  
17      demonstrate that an expired permit is - is in  
18      effect your permit during that period -  
19      interim period that Richard referenced. So,  
20      again, our feeling is with respect to all the  
21      other standards changes that are - that are  
22      occurring at this point, a five-year schedule  
23      or five-year permit in the five-year variance  
24      would be more applicable in this case.

1           COMMISSIONER PERRY: In effect, is this  
2           variance giving them another interim permit  
3           because we're making a variance to an expired  
4           permit?

5           MR. LAUX: The staff recommendation was to,  
6           essentially, renew the permit and to give the  
7           rest of that permit period as the initial  
8           period for the variance. On the other hand,  
9           there's nothing to prevent you guys from  
10          giving a five-year variance and then we can  
11          issue the permit for shorter period of time  
12          and that renewal - you know, the variance  
13          would still be in effect and would be  
14          reflected in the next permit. I think it's  
15          really - from staff perspective, as long as  
16          the action that you want to take is reflected,  
17          the actual expiration date of the permit is  
18          not a tremendous issue to us. Again, the  
19          standard practice, to make sure that everyone  
20          knows that they've been permitted through that  
21          period of time, has been to tie it to the  
22          previous permit expiration date.

23          COMMISSIONER PERRY: So I guess the  
24          follow-up question is how long do you need

1           this variance?

2           MR. STOBBER:  We - we're requesting a five-year  
3           variance in --

4           COMMISSIONER PERRY:  That wasn't my  
5           question.  How long do you need the variance?

6           MR. STOBBER:  Well, the - the, you know, the  
7           long-term control planning process for the  
8           CSO's are not going to be over in five years  
9           as well.

10          COMMISSIONER PERRY:  Okay.

11          MR. STOBBER:  You know, all these issues take a  
12          various lengths of time and that's why, you  
13          know, also with EPA guidance, they acknowledge  
14          that, you know, we've had these systems in  
15          place for - since 1880.  It's probably not  
16          going to get fixed in the next five years as  
17          well.  I don't have a - a - I don't believe  
18          the City would have a problem with the latter  
19          approach that Richard just discussed on going  
20          ahead and issue the current permit as long as  
21          that variance is in place and then there would  
22          be an interim set of limits for the remaining  
23          whatever two and a half years or so.  Within  
24          the next permit.  And if we could get that,

1           you know, as public record through these  
2           proceedings.

3           COMMISSIONER PERRY: This is that same  
4           forty-five that we've been hearing so much  
5           talk about.

6           MR. LAUX: Right.

7           MR. STOBBER: That's - that --

8           COMMISSIONER PERRY: So we haven't changed  
9           the rule, but now is - are there five  
10          municipalities that are having the same  
11          problem? Are the other four going to come in  
12          and ask for a variance for the same thing?

13          MR. STOBBER: I can't speak for the other ones.  
14          Obviously, Moberly has already addressed this  
15          with the Commission. I can't speak for St.  
16          Joseph, Kansas City and St. Louis MSD, but,  
17          again, yes, the variances for a variance from  
18          the regulation that pertains to the forty-five  
19          forty-five. Now, you know, obviously you've  
20          got a - a proceeding in place or a  
21          stakeholders group that's been put together to  
22          adopt those - or to modify those regulations  
23          so, eventually, at some point, we should get  
24          away from these variances.

1 MR. GALBRAITH: I've got a question.

2 CHAIRMAN HERMANN: Yes.

3 MR. GALBRAITH: You mentioned about the  
4 monitoring. I was unclear and I wanted to  
5 make sure that - that the Commission was clear  
6 on what you were asking. Are you asking that  
7 the details of the monitoring be put in the  
8 long-term control plan or the nine-minimum  
9 controls plan?

10 MR. STOBBER: Well, monitoring's one aspect of  
11 the nine-minimum controls.

12 MR. GALBRAITH: Okay.

13 MR. STOBBER: So, yeah, that should be  
14 incorporated - the main point is that that  
15 should be incorporated into those documents  
16 rather than the MPDS permit, which gives you  
17 limited flexibility on changing monitoring  
18 locations, frequency, and so forth, which is  
19 still another thing we need to work through  
20 with - with the Department on the specifics of  
21 this program.

22 MR. LAUX: The concern that we have is physical  
23 storage of the information. Basically, our  
24 database is the MPDS permit database. It

1       would be difficult for us to keep track of  
2       in-stream monitoring that was submitted to us  
3       that we couldn't put into that particular  
4       database. We don't really have any other  
5       databases. So it would really have to be  
6       held, more or less, a paper version and,  
7       again, it's just not easy for staff to deal  
8       with information like that. On the other  
9       hand, certainly staff would be willing to look  
10      at any proposed changes during the period of  
11      the permit and propose modification at their  
12      request, but we do recognize that that does  
13      take potentially public notice and time to get  
14      those changes done. We're not unsympathetic  
15      to the need to modify these through the permit  
16      period. I think from a practical standpoint,  
17      our fear is that we will simply lose track of  
18      it if we don't have the same database that we  
19      use for all the other in-stream information  
20      available to us and that is really through the  
21      permit. So --

22      MR. STOBBER: I think the City would be happy  
23      to provide the data to the Department in any  
24      format that they would - they would see - see



1       fit and - and at the permit renewal and so  
2       forth. And then also provide those data to  
3       the - some of the normal recourses for - for  
4       storing the data. For example, the - the  
5       Water Quality Monitoring Assessment section,  
6       which - which maintains detailed database on  
7       all classified stream data. Again, my - my -  
8       my only feeling is just - my concern is just  
9       what Richard raised that we really limit  
10      ourselves and put more of a burden on the  
11      State and the Commission, potentially, by  
12      placing these requirements in the permit  
13      versus through - through other reporting  
14      mechanisms.

15      MR. LAUX: One last point. That's not the way  
16      we've done it anywhere else.

17      CHAIRMAN HERMANN: We keep - apparently, the  
18      Department keeps records on monitoring of  
19      streams all over the state for long periods of  
20      time. One of the difficulties we have, the  
21      303d list, as you remember, was we were given  
22      fish tissue samples back as far as five and  
23      eight years ago. Apparently, you can store  
24      all that data. If we - if we don't do it like

1       it's done every day of the week, we have to go  
2       outside of the box for a specific reasons, and  
3       I would think that these cities would have  
4       specific reasons, I see no difficulty in  
5       modifying the day-to-day operations to achieve  
6       the achievable end.

7       MR. LAUX:  If these are monitoring requirements  
8       only, which they would be, there really isn't  
9       a public notice procedure that we would have  
10      to go through.  We could simply modify the  
11      permit - send it out.  If - if it is something  
12      where there's a limitation associated with it,  
13      then the full public notice process would  
14      apply.  But if we're talking monitoring only,  
15      that's a minor modification and staff has more  
16      flexibility on approving minor modifications  
17      than --

18      CHAIRMAN HERMANN:  A lot of your reports are  
19      going to read treatment plants with  
20      discharges.  Monthly or whatever it's -it's  
21      due on that particular type.

22      MR. GALBRAITH:  Are you saying, Richard, that  
23      the problem is - if it's not in the permit, it  
24      can't go in with all the other data?  There's

1           a - there's a - is there a legal or what's the  
2           impediment?

3           MR. LAUX: The other database, and you may  
4           remember there were issues with the kind of  
5           data that goes in there, so there is a  
6           different standard currently for the 303d  
7           listing than we have for other information -  
8           for instance, from permit holders.  
9           Personally, I'm probably not the right person  
10          to talk to about the nuances of those  
11          databases, but I know as a permit writer the  
12          database that we use is the - what we would  
13          term as the NPDES database, the state operating  
14          permit database. It's available in all the  
15          regions. The other database is more limited  
16          in who has access to it and the quality of  
17          data somewhat differs as to the requirements  
18          for that quality of data. So I just know  
19          there are differences and it's not the kind of  
20          thing where we normally put it in all systems,  
21          for instance. Usually, it's one or the other.

22          MR. GALBRAITH: If - if - and I apologize  
23          because I - I don't understand all the nuances  
24          here. If - if the Commission were to approve

1       your recommendation, Richard, as it stands  
2       today, there is a public comment period  
3       through - during which time maybe Trent and we  
4       could get together and sort these things out.  
5       Is that true?

6       MR. LAUX:   Our proposal would be for them to  
7       propose what in-stream monitoring and then we  
8       would include it in a renewal of the permit --

9       MR. GALBRAITH:   Okay.

10      MR. LAUX:   so that other folks could look at  
11      it, see whether they believed it was  
12      sufficient, things like that.

13      MR. GALBRAITH:   Okay, but I guess what I'm  
14      asking can we sort out this thing about the  
15      data during that time and, kind of, I mean, I  
16      want to be receptive to - to what the City  
17      needs. I mean, they're a customer. At the  
18      same time, you can appreciate - I think  
19      everybody can appreciate with thousands of  
20      permits that every exception is - is  
21      potential, you know, wrench in the smooth  
22      operation of a, kind of, assembly line  
23      process, so -

24      CHAIRMAN HERMANN:   Your assessment that we -

1           this is to be public noticed - comment period?

2           Relative to that, we won't consider it as  
3           final until the September meeting --

4           MR. GALBRAITH: Would that be acceptable to  
5           you, Trent?

6           MR. STOBBER: So - so tell me, how are we going  
7           to specify frequency, locations and so forth  
8           at this - at this point? I mean - I think  
9           those are all details that, to me, really need  
10          to go through the Quality Assurance planning  
11          process that EPA utilizes for making water  
12          quality decisions, which is a rather detailed  
13          - rather detailed scenario and so I'm  
14          wondering how that's going to be factored in -  
15          in the limited time frame that we have right  
16          now.

17          MR. GALBRAITH: Well, I don't know. I'm - I'm  
18          having trouble making - I'm having trouble  
19          making a solid recommendation to the  
20          Commission on this. I haven't had time to - I  
21          guess I was thinking about can we settle this  
22          issue about where that plan exists in this  
23          interim and maybe we can come to some meeting  
24          of the minds? Because if it has to go on the

1        permit, we're going to have to get it figured  
2        out anyway, but maybe - maybe we can find some  
3        middle ground or we can find a way to meet  
4        everybody's needs. But I don't think we're  
5        going to do it - we just can't do it here.

6        MR. STOBBER: Sure. I guess you realize the  
7        complications with it is - it's sort of an  
8        interim process. We, essentially, can't work  
9        through the whole long-term control planning  
10       process and so forth until we figure out what  
11       the limitations are that we're shooting for.

12       MR. GALBRAITH: Right.

13       MR. STOBBER: And so forth. So, that's fine if  
14       we sort through this in the interim.

15       CHAIRMAN HERMANN: I think all staff is  
16       recommending today is that we allow them the  
17       public notice variance request and that  
18       consider the final at the September meeting.  
19       Is that right, Richard?

20       MR. LAUX: Basically, we're looking for you to  
21       take preliminary action to okay the idea of  
22       the variance and part of the recommendation  
23       was that the long-term control plan addressed  
24       the issue of in-stream monitoring and we would

1           then include that into the permit. But that  
2           wasn't all to be done between now and  
3           September, obviously. That's something that  
4           would be done after you've decided on the  
5           variance.

6           CHAIRMAN HERMANN: Okay. Anything else? Mr.  
7           Maloney?

8           MR. GREG MALONEY: Can I ask a couple of  
9           questions?

10          CHAIRMAN HERMANN: Yes, sir.

11          MR. MALONEY: Okay. Can Joe Citizen  
12          get a copy of your recommendations on plans?

13          MR. STOBBER: Your recommendations or mine?

14          MR. LAUX: If you mean the staff  
15          recommendation, yes. We can make a copy  
16          available to you, no problem.

17          MR. MALONEY: Can you define long-term?

18          MR. LAUX: Under the EPA guidance, there isn't  
19          a definition of long-term. We've seen some  
20          proposals greater than fifteen years. I've  
21          heard discussion of even longer schedules than  
22          that. There's some that are shorter, but I  
23          think we're talking a pretty long term here.

24          MR. MALONEY: You're talking about a

1       substantial investment in the infrastructure  
2       of the city. Has the City attempted to put a  
3       bond matching funds or anything of that  
4       nature?

5       MR. STITH: In answer to your question, they  
6       have not. At this point what we're doing is a  
7       initial phase of work and with that will - and  
8       the outcome of the studies that Trent is  
9       proposing here that will be a part of a permit  
10      - or a part of the long-term control plan is  
11      what I meant to say. A part of the long-term  
12      control plan. We'll have direction on what is  
13      the cost effective means to approach all the  
14      combined sewer overflow issues and wastewater  
15      treatment issues, as well.

16      MR. MALONEY: Which might be after my  
17      funeral?

18      MR. STITH: A specific time frame has not been  
19      established.

20      MR. MALONEY: Where does the overflow  
21      of the rift - where does the overflow go now?  
22      With the rain and the snow --

23      MR. STITH: It goes into Sewer Creek. That's  
24      right - the combined sewer, which - which



1           would be both would go into Sewer Creek.

2           MR. MALONEY:   Okay.   What if the  
3           monitoring is high?   What are they going to  
4           do?

5           MR. STITH:   That'll give us direction on the  
6           amount of additional treatment and capture  
7           that combined sewer overflow that would be  
8           needed in the future - future plans - or the  
9           next phase.

10          MR. MALONEY:   So, in '97, for sure the  
11          City knew this was a problem.   Okay - my dad  
12          received a letter to that effect.   Now you  
13          want five more years on top of that.   You  
14          know, that's thirteen years.

15          MR. STITH:   Well, they're - they're trying to  
16          correct an issue that began back in - you  
17          know, over a hundred years ago and it takes  
18          time then to correct something that has gone  
19          on for that long.   It was - it was - we're  
20          trying to correct something that was designed  
21          that way over a hundred years ago.

22          MR. VERNON MALONEY:   (Off microphone) put in  
23          forty-five years ago.   You got eight six-foot  
24          sewer (off microphone) underneath the town

1           (off microphone) grit chamber. Then that  
2           grit chamber - that line going over to -  
3           two-foot line going out to sewer lines. We -  
4           we - I'm on a eight-inch line out there  
5           and its busted out. Two or three  
6           houses along there has the same trouble.  
7           MR. STITH: There are some other issues  
8           related to that and as far as what is in front  
9           of the Commission today for this variance  
10          request, I think - I think that is kind of a -  
11          somewhat of a separate issue. And I know that  
12          you all have --  
13          Mr. Maloney: (Off microphone) on to that grit  
14          chamber over to that two-foot line over there  
15          pull out (off microphone) disposal plant.  
16          MR. STITH: I would say that at the time that  
17          that was completed, that would have been  
18          acceptable at that time --  
19          MR. MALONEY: That rathole out there -  
20          I've seen water up there around those pipes  
21          shoot out of it.  
22          MR. STITH: I understand you have a --  
23          MR. MALONEY: Raw sewage going down in  
24          there and they call that Sewer Creek - they

1 think that forty-five years ago, it was raw  
2 sewage coming out through there.

3 MR. STITH: Yeah, that was the original design  
4 of that system was for that to happen and as  
5 time has progressed there have been treatment  
6 --

7 MR. MALONEY: (Off microphone) ever  
8 since (off microphone). I kept a strip of ground there -  
I retired fifteen years ago (Off microphone).

9 MR. STITH: I understand you all have a  
10 meeting with local staff with DNR tomorrow and  
11 be working on some of the local issues with  
12 that.

13 MR. MALONEY: To let (Off microphone) take it off that two  
foot one that comes from that grit chamber (Off  
microphone). That whole - - a blind man would know better  
than that.

14 MR. STITH: And I would say that that was a  
15 part of the design. Like you said, forty-five  
16 years ago that was an acceptable practice at  
17 that time. That's what we're trying to  
18 correct.

19 MR. MALONEY: Ahh get out --

20 CHAIRMAN HERMANN: Okay. Okay, I think we're ready  
21 for a question on the variance. Yes, sir.

22

23 MR. BRYAN: This is unusual in most

24 instances where we have a variance with the

1 Commission. Do not have some of what Mr.  
2 Maloney's bringing in information that  
3 suggests that perhaps continuance of the  
4 variance would permit the continuance of the  
5 condition, which may cause or contribute to -  
5 even though there are fish or aquatic life problems  
7 and that's one of the standards that  
8 you've got to overcome to issue a variance. I  
9 recommend that you go ahead with this if  
10 that's what you're inclined to do, but know  
11 within that the next thirty days I'm going to take  
12 a look at whether or not this record will be  
13 defensible after it's challenged. Then we'll  
14 come back to you at that next meeting to make  
15 that determination. There has been an issue  
16 raised.

17 CHAIRMAN HERMANN: Okay.

18 MR. GALBRAITH: What are the alternatives if -  
19 if they are concerned about that --

20 MR. BRYAN: We can evaluate the  
21 record before you go ahead and make the  
22 preliminary finding and we can make a final  
23 decision in September after we review after this  
24 meeting.

1 COMMISSIONER HARDECKE: Now, are you talking  
2 about the other evidence being what this  
3 gentleman has brought forth --

4 MR BRYAN: Yes.

5 COMMISSIONER HARDECKE: or something else.  
6 Okay.

7 END OF TAPE 2, SIDE B

8 BEGINNING OF TAPE 3, SIDE A

9 COMMISSIONER HARDECKE: When you got down  
10 the line further with your plan, that line  
11 would be added to it. Am I correct or --

12 MR. STITH: That's correct. The future phases  
13 of the project include constructing a larger  
14 line from the grit chamber, which is upstream  
15 of Mr. Maloney, down to the wastewater  
16 treatment facility. Our plan here with the  
17 in-stream monitoring that - that Trent has  
18 discussed, is that we can then determine the  
19 proper size for that line and make it cost  
20 effective in its sizing.

21 COMMISSIONER HARDECKE: So that would  
22 address part of the problem that he's talking  
23 about, right?

24 MR. STITH: I believe it would.

1           CHAIRMAN HERMANN:  Anything else?

2           COMMISSIONER PERRY:  Mr. Bryan, could  
3           you explain - I'm not sure I understand this.  
4           We have before us a variance to change the  
5           forty-five forty-five limit.  And somehow  
6           we're supposed to include in it some idea of  
7           some sort of monitor as a requirement of that  
8           variance, which actually belongs in the  
9           Department.

10          MR. BRYAN:  There is some question about  
11          whether or not we should have that monitoring  
12          information before you decide on the variance.

13                 The issue of variance - the Statute says, "No  
14          wherein shall be granted and with the effect  
15          of grants will permit the continuance of a  
16          condition, which may not be reasonably caused  
17          or contribute to adverse health affects upon  
18          humans, or upon fish, or upon other aquatic  
19          life." --

20          COMMISSIONER PERRY:  Okay.

21          MR. BRYAN:  So without that evidence, your  
22          decision could be subject to challenge as  
23          being capricious.  That's an issue.  So  
24          narrowly, there's just a question of whether

1           this variance would permit continuance of such  
2           a condition. Without a bond hearing, I'm  
3           hearing some conflicting evidence about this.

4           COMMISSIONER PERRY: Okay, so, and what  
5           harm does it happen to anything if we table  
6           this until we have that information rather  
7           than make some action that we may, in thirty  
8           days, have to - and if it's my understanding,  
9           if we go ahead and do this, then it's public  
10          notice so not only are we undoing our action,  
11          but we're undoing a hearing. We're going back  
12          to all these people who came to some public  
13          notice situation and said, "Oh, never mind."

14          MR. BRYAN: That's true. The only - the -  
15          having a hearing would help you gather  
16          evidence and a broader record on this to make  
17          your decision. And that is a good  
18          perspective. I think to some extent, the same  
19          question may come up with respect to the  
20          Moberly variance that's coming up. And it will be  
21          for a (Off microphone).

22          CHAIRMAN HERMANN: Well, until testing is done  
23          and the overflow's qualified, in terms of  
24          pollutant and quantity, you can't determine if

1           there's any ill effects to fish life,  
2           population or anything else. You never know  
3           if the discharges are coming out of that sewer  
4           or injurious to the fish or anything else  
5           until the testing is done. I would think the  
6           testing is a - an essential part of the  
7           decision making.  
8           MR. BRYAN: I agree.  
9           COMMISSIONER PERRY: It is or is not?  
10          CHAIRMAN HERMANN: It is.  
11          COMMISSIONER PERRY: So we don't have  
12          enough information to make a decision here.  
13          MR. BRYAN: There's certainly a strong  
14          argument either way with it.  
15          CHAIRMAN HERRMANN: On the other hand --  
16          Yeah - if - if the present  
17          limitation remains and there is no variance,  
18          then it - it's also assumed that the City of  
19          Macon is outside the discharge limits anytime  
20          they discharge. It is assumed. It isn't  
21          proven yet. So, therefore, they - they would  
22          be in violation - assumed to be in violation.  
23          Yes, sir, Trent?  
24          MR. STOBBER: One thing, I would just like to



1 bring up again. The whole purpose of your  
2 original direction on - on these issues was to  
3 give us something that's - that's consistent  
4 with Federal policy.

5 CHAIRMAN HERMANN: Right.

6 MR. STOBBER: EPA policy. And also to - to -  
7 to potentially take us from a regulation that  
8 is - is far more stringent than EPA policy and  
9 doesn't allow these projects to go forward.  
10 There's several examples of that here in the  
11 state where this - this policy is - is impeded  
12 the improvement of the conditions that we're  
13 talking about. So, I mean, this is - this is  
14 vital to - to make sure that progress is made  
15 in these situations.

16 MR. GALBRAITH: I believe you were  
17 referring to the - the Commission's direction  
18 to - to the Department on the CSO in  
19 forty-four and forty-five, which was --

20 MR. STOBBER: Right. I mean, I don't know if  
21 that's where --

22 MR. GALBRAITH: like last December or at  
23 a previous meeting, so - so the - I think  
24 what Trent's saying is that the Commission has

1           already kind of set - has set an expectation  
2           that - that this course of action was going to  
3           be one that - that - that the Commission would  
4           be open to and I just - I think we need to be  
5           aware of that previous decision as we're  
6           deliberating this.

7           MR. STOBBER: And again, I think it's  
8           beneficial for the environment. I think these  
9           projects are going to go forward more than if  
10          we're in this no man's land between what are  
11          in the regulations and - and what makes sense  
12          and what makes sense from the Federal  
13          perspective, as well.

14          CHAIRMAN HERMANN: The only thing the City is  
15          asking for as a variance is to strike the  
16          forty-five forty-five limitation during this  
17          period of study to prove that it's either a  
18          valid requirement or an invalid requirement  
19          and necessary or not necessary for that  
20          particular city. And that's why I see no  
21          difficulty in granting a variance, which all  
22          you're doing is varying from that forty-five  
23          forty-five, which is right now the printed  
24          word.

1           COMMISSIONER KELLY: I think we can on  
2           that, though, until we can - I would like to  
3           see us wait and so, I'm going to move that we  
4           postpone a decision until we do have more  
5           information and set that for next meeting in  
6           September, if the information is available.

7           COMMISSIONER HAUSER: What information  
8           will be available in September?

9           COMMISSIONER KELLY: I'd like to know  
10          if there is going to be harm by granting the  
11          variance.

12          COMMISSIONER HAUSER: But my understanding  
13          is that we need that monitoring to determine  
14          that.

15          MR. STOBBER: Well, also, there is no, you  
16          know, human health exposure issues with  
17          respect to the forty-five forty-five permit  
18          limitations. I mean, the - the - again, the  
19          variance that we have here is on biochemical  
20          oxygen demand and suspended solids. And, you  
21          know, there's, at best, an indirect  
22          correlation with - with anything respect to  
23          human health. The - the, you know, - and with  
24          respect to aquatic life, Sewer Creek is

1           protected by narrative criteria anyway, which  
2           - which - I don't see that we've changed  
3           anything with respect to - to - to that.  
4           CHAIRMAN HERMANN: Any of that line standing  
5           back there in the back? Comments? Mary or --  
6           MS. WEST: We're waiting for our  
7           turn.  
8           MR. BRUNDAGE: Mr. Chairman, Robert Brundage.  
9           I'm Counsel for the City of Moberly and we  
10          were wondering if your vote on the City of  
11          Macon was going to kind of set a precedent for  
12          the City of Moberly, so, we have some of the  
13          same current concerns that Trent expressed  
14          that the way we looked at the situation that a  
15          variance for the forty-five forty-five for BOD  
16          and suspended solids was going to allow that  
17          the City proceed implementing and developing  
18          their - their plan - their CSO plan without  
19          the threat of violations through their permit.  
20          And I think you saw - some of you  
21          Commissioners were on the tour yesterday and  
22          you saw that it's relatively infrequent that  
23          the City of Moberly even violates the  
24          forty-five forty-five, so, we thought the

1       variance was appropriate. However, we are  
2       concerned about the Point Three into the  
3       recommendation that the variance would only be  
4       for thirty months, because we requested a  
5       five-year variance. And it was our hope and  
6       expectation that we also could get a five-year  
7       permit instead of like a three-year permit and  
8       have our permit reopened in again in three  
9       more years instead of the normal five-year  
10      period.

11      CHAIRMAN HERMANN: Mrs. West, just for the  
12      advocation of people who weren't on the tour  
13      yesterday, your graphs that you presented  
14      showed that you had maybe a couple of  
15      exceedances of forty-five on the suspended  
16      solids limit and no exceedances of forty-five  
17      on the BOD on any of the monitored overflows;  
18      is that correct?

19      MS. WEST: That was in calendar year, 2004.

20      CHAIRMAN HERMANN: That was in 2004?

21      MS. WEST: Yes, we did have some exceedances  
22      of BOD in 2002, on a couple of the CSO's.

23      CHAIRMAN HERMANN: Okay.

24      MS. WEST: So, it just depends on the weather

1           in any given year. I really would like a  
2           five-year permit.

3           MR. BRUNDAGE: And Mr. Chairman and the  
4           Department Staff, Richard mentioned the fact  
5           that one of the reasons the Department  
6           considers issuing a permit that relates back  
7           to the last time your permit expires just so  
8           that it doesn't appear in the file that  
9           there's - there is a gap in the period that  
10          you are permitted. And Trent properly pointed  
11          out that the - the regulations say you are  
12          permitted if you - if you timely apply for  
13          your permit - like a hundred eighty days  
14          before the expiration - you're still deemed  
15          permitted. And if the Department was  
16          concerned about it, they could still issue a  
17          five-year permit and to create a paper trail  
18          for that, they can put an annotation in your  
19          new five-year permit that this permit was  
20          issued on this date and this other previous  
21          time since the expiration date of the previous  
22          permit was - was considered permitted and that  
23          would suffice for our means to properly  
24          document the file that we were operating

1           legally and it would address Richard's concern  
2           that the file addressed that. So that's a -  
3           that's a suggestion for the Department to use  
4           to be able to issue a five-year permit because  
5           otherwise, we know the Department's under  
6           pressure and has a certain amount of permit  
7           backlog. If they have to address Moberly's  
8           permit in three more years, that adds to their  
9           backlog instead of waiting five years to renew  
10          the permit again. So, please consider that.

11         CHAIRMAN HERMANN: Would - Ed and Trent -  
12         would you be able to provide the Commission,  
13         before September meeting, these points of  
14         arguments about the control plan - or rather,  
15         the testing plan? Leading up to the control  
16         plan? If there are some Commissioners that  
17         have some concern about what or how is going  
18         to be done, can - can a basic outline concept  
19         be - be prepared and presented? And agreed to  
20         by staff?

21         MR. STOBBER: You know, I think we could work  
22         towards that.

23         CHAIRMAN HERMANN: Okay.

24         MR. STOBBER: I mean, preliminary fashion

1       again, you know, there's complexities to all  
2       of this with respect to how we're going to  
3       assess future water quality and improvements  
4       we expect from CSO controls, which is, you  
5       know, can be done by various manners. One of  
6       which would include water quality modeling and  
7       so forth. So, really, you have to go into the  
8       - the model requirements to develop a good  
9       monitoring system that is going to give you  
10      the information that you need. So, I just  
11      want to, you know, again, reiterate that -  
12      that coming up with these monitoring plans to  
13      - to do it right takes - takes a little bit  
14      more time, but I would hope that we're not  
15      going to impede the movement of some of the  
16      City's plans, particularly Phase I, which was  
17      a cost effective way of removing the majority  
18      of the BOD load into that system.

19      CHAIRMAN HERMANN: By the next meeting, come  
20      up with a final after it's public noticed this  
21      time. After this meeting, we come up for  
22      final consideration in September if we have  
23      some more details to --

24      MR. STOBBER: I think - I think we can work



1           with - with the Department to - to give you  
2           more details on what that - that may look  
3           like, sir.

4           CHAIRMAN HERMANN: So all the City is asking  
5           for is to set aside the forty-five forty-five  
6           requirements Bill. That's the way I look at  
7           it.

8           MR. BRYAN: One point is that the policy that  
9           you have - recommendation is - is all well and  
10          good except that the Statute has certain  
11          conditions that it's the applicant's  
12          obligation to demonstrate their requested  
13          variance satisfies that Statute. So given  
14          some additional time, they might be able to do  
15          that. Now, Mr. Maloney raised some issues  
16          that deserve some consideration to make sure  
17          their compliant with the Statute.

18          CHAIRMAN HERMANN: Yeah, okay. But I don't  
19          think that has anything to do with the  
20          forty-five forty-five. I think that has to do  
21          with the implementation of the long range plan  
22          where you're going to get the discharges under  
23          control and contain them within the system.

24          MR. BRYAN: This is your decision, it's not

1           mine.  So --

2           COMMISSIONER PERRY:  But if it's part

3           of something that's causing harm --

4           CHAIRMAN HERMANN:  Pardon?

5           COMMISSIONER PERRY:  But I think Mr.

6           Bryan's making a good point, then.  You're

7           giving a variance on part of something when,

8           in fact, the whole thing is causing some harm,

9           may not be a legal basis on which to grant a

10          variance.  And we don't know the answer to

11          that.  And the issue has been raised.

12          CHAIRMAN HERMANN:  The variance requested is

13          not causing harm.  Any assumed harm.

14          COMMISSIONER HARDECKE:  The monitoring that

15          you showed us yesterday, is - are you going to

16          do additional monitoring or is that what

17          you're going to gather the data on?

18          MR. STOBBER:  No, there'll be additional

19          monitoring from - from what the City has been

20          doing as part of its permit compliance.

21          COMMISSIONER HARDECKE:  On just the CSO's or

22          on all this?

23          MR. STOBBER:  On all - all the - the CSO's, the

24          receiving waters and the impacts of the - the

1       receiving waters on - on the - on the - the  
2       impacts of the CSO's on the receiving waters,  
3       which could include, you know, monitoring some  
4       of the storm water run-off from the separated  
5       portion of - of town, as well as agricultural  
6       area, which I'll - you know, there's several  
7       different sources to, you know, bacterial  
8       contributions to a receiving stream like that.

9       So, I would think that our - our monitoring  
10      program will try to capture some of that to  
11      evaluate how good a difference would be if we  
12      separated the sewers, which is not feasible.

13      COMMISSIONER HARDECKE: But you have been  
14      monitoring the overflows already?

15      MR. STOBBER: Right. And the City knows the  
16      number of overflows that, you know, that have  
17      occurred in - in - since last - since  
18      monitoring has began and so forth.

19      CHAIRMAN HERMANN: - - a Grab sample basis?

20      MR. STOBBER: Right - Dennis has been more  
21      involved with the monitoring to date.

22      MR. STITH: For the permit compliance, the  
23      City has been taking the grab samples during -  
24      during the overflow events, but since about a

1 couple of years ago, they did install some  
2 automatic samplers, flow measuring devices.  
3 So, we do have some background information on  
4 that. Some of those events that were  
5 monitored, it had some multiple samples taken  
6 during - during an overflow event so we do  
7 have some information. But I'd like to point  
8 that that information, though, is on the  
9 existing system as it is. We do want to also  
10 monitor after we make these sewer separations  
11 that we're proposing, full well knowing that  
12 that is going to be a much - have a lot less  
13 concentrations of the BOD and suspended solids  
14 in that overflow. So - and then that  
15 information that we gather is what we use for  
16 future planning, as well.

17 CHAIRMAN HERMANN: Yep - you get time limited  
18 samples - series of samples through a storm  
19 period or run-off period and you can tell when  
20 the first flush is gone. Those kinds of  
21 things you can assess magnitude of pollution  
22 delivered by a storm event.

23 MR. STITH: Yes, you'd assess that magnitude  
24 and the time and the volume so that you can

1           plan your facilities accordingly.

2           CHAIRMAN HERMANN:  So, it's - it's not a -  
3           take a bunch of samples today and we'll have  
4           the results next week.  It's a continual  
5           sampling process, first of all, we have to  
6           wait for God to make some rain.

7           MR. STITH:  That's true.

8           CHAIRMAN HERMANN:  And that doesn't happen too  
9           often around here.

10          MR. STITH:  And then we also want the results  
11          to include the time frame after we've made  
12          these initial improvements.

13          CHAIRMAN HERMANN:  Yeah.

14          MR. STITH.  That's really the information that  
15          will give us the best - that's really the best  
16          information for planning for the future.

17          **CHAIRMAN HERMANN:  The Chair would entertain a**  
18          **motion?**

19          **COMMISSION PERRY:  We have a motion.**

20          **CHAIRMAN HERMANN:  We don't have a second.**  
21          **That one died for lack of a second in my**  
22          **interpretation.  Unless you want to make it**  
23          **again?**

24          **COMMISSIONER EASLEY:  Let me make a**

1 motion. It probably won't get a second,  
2 either. I move that the Commission directs  
3 staff to public notice the intention of the  
4 Commission to grant final approval at the next  
5 meeting.

6 CHAIRMAN HERMANN: Do we have a second?

7 COMMISSIONER KELLY: I'll second that  
8 one.

9 CHAIRMAN HERMANN: Okay, then moved and  
10 seconded. Any discussion? Please call for  
11 the vote, Marlene.

12 COMMISSIONER PERRY: Do we still have a  
13 quorum without Mr. -- ?

14 COMMISSIONER EASLEY: He gave me his  
15 proxy.

16 COMMISSIONER PERRY: He gave you his  
17 proxy?

18 MS. KIRCHNER: Commissioner Hardecke?

19 COMMISSIONER HARDECKE: Yes.

20 MS. KIRCHNER: Commissioner Easley?

21 COMMISSIONER EASLEY: Yes.

22 MS. KIRCHNER: Commissioner Hauser?

23 COMMISSIONER EASLEY: He left the room --

24 MS. KIRCHNER: Commissioner Kelly?

1 COMMISSIONER KELLY: Yes.

2 MS. KIRCHNER: Commissioner Perry?

3 COMMISSIONER PERRY: Yes.

4 MS. KIRCHNER: Chairman Hermann?

5 CHAIRMAN HERMANN: Yes. Thank you.

6 MR. STOBBER: I apologize, but could I just

7 hear back that - that motion to make sure

8 we're clear on that?

9 COMMISSIONER EASLEY: **The motion was a move**

10 **that the Commission direct staff to public**

11 **notice the intention of the Commission to**

12 **grant final approval at the next meeting.**

13 MR. STOBBER: Thank you.

14 CHAIRMAN HERMANN: Mr. Maloney, I would

15 encourage you to have your meeting tomorrow

16 with the people and see if you can work

17 something out.

18 MR. MALONEY: I've been waiting for two weeks.

19 CHAIRMAN HERMANN: Well, I'm --

20 MR. MALONEY: Also, it looks like I'm going to

21 get to see another Commission meeting.

22 CHAIRMAN HERMANN: Well, you won't have to

23 travel as far to the next one.

24 COMMISSIONER EASLEY: Don't die in the

1           meantime.

2           CHAIRMAN HERMANN: Yeah, take your wife and she'll  
3           go shopping and spend all your money while  
4           you're there. Okay, moving to Tab Six. We  
5           have Lori - **Luray** - how do you pronounce that?

6

7           MR. LAUX: I believe it's Luray.

8           CHAIRMAN HERMANN: Luray? Okay.

9           MR. LAUX: Basically, the next two are very  
10          similar.

11          CHAIRMAN HERMANN: Yes.

12          MR. LAUX: First one is from the Village of  
13          Luray. They are seeking relief from the  
14          portion of the rule that requires the  
15          thirty-thirty limitations be utilized - the  
16          secondary treatment standards - unless the  
17          water quality impact study is completed, that  
18          shows that alternate less stringent limits  
19          will not cause violations of the water quality  
20          standards or impede any beneficial uses of the  
21          stream. Basically, these two facilities are  
22          nearing completion. They are single cell  
23          lagoons. There has not been a water quality  
24          study performed on them. Staff is



1 recommending that, basically, due to staff  
2 issuing construction permits and allowing the  
3 construction to proceed, that we're  
4 recommending approval of the request with the  
5 conditions that are in the packet to include  
6 in-stream monitoring and a re-opener clause.  
7 We are recommending approval of the request.  
8 And I believe there is somebody here  
9 representing the City or the Village.

10 CHAIRMAN HERMANN: Are you covering both  
11 Revere and Luray at the same time?

12 MR. LAUX: You could do that because they're  
13 very similar.

14 CHAIRMAN HERMANN: Yeah.

15 MR. LAUX: **Revere** is also a northwest Missouri  
16 - or northeast Missouri, rather, and similarly  
17 has constructed a single cell lagoon and is  
18 ready, I believe, to put into service. We  
19 issued a construction permit allowing  
20 construction to proceed without the study and  
21 we have the very same recommendation. We're  
22 recommending approval with the inclusion of  
23 in-stream monitoring and a re-opener clause on  
24 both. Both these facilities are more than two

1       miles from a classified stream, so  
2       disinfection should not be an issue with them  
3       currently.

4       CHAIRMAN HERMANN: Okay, that was my question.

5       What - where and what are you going to  
6       monitor?

7       MR. LAUX: Basically, the thought was to  
8       monitor the stream downstream to determine  
9       compliance with standards for ammonium,  
10      particular, so that would be of the  
11      unclassified streams for the acute criteria  
12      and probably include classified stream for the  
13      chronic criteria, to make sure we're in  
14      compliance with both standards.

15      CHAIRMAN HERMANN: Luray discharges to South  
16      Linn Creek. Revere discharges - discharges to  
17      Dumas Creek, and neither of those are  
18      classified streams.

19      MR. LAUX: Right. Both have classified streams  
20      downstream. There is a classified portion of  
21      Linn Creek roughly two miles downstream of the  
22      Luray facility and the Des Moines River is a  
23      permanent flow stream about three miles downstream  
24      of the Revere discharge.

1 CHAIRMAN HERMANN: Well, it says that Revere  
2 discharges to a tributary to Dumas Creek and  
3 Dumas Creek is not in Table H.

4 MR. LAUX: Right, it's also an unclassified  
5 stream and then the closest classified stream  
6 is the Des Moines River, which is  
7 approximately three - a little over three  
8 miles downstream of the City's discharge.

9 CHAIRMAN HERMANN: These are both rated for  
10 twenty thousand gallons a day?

11 MR. LAUX: I believe that's the correct design  
12 flows.

13 MR. GALBRAITH: I believe this is consistent  
14 with the recommendation that Peter Goode  
15 brought before the Commission at the last  
16 meeting. Basically, what - what they're  
17 asking the Commission to do is to forego the  
18 up front water quality study in preference for  
19 in-stream monitoring, which is - which you can  
20 - you can - it's somewhat cheaper and you can  
21 spread the cost of that over time, rather than  
22 having to have that study performed and it  
23 also gives you real time data. But I, you  
24 know, it - it fulfills - I think the - the -

1           it's selling point is it essentially fulfills  
2           the requirement of the regulation that water  
3           quality be assessed. It just puts that  
4           assessment after construction rather --  
5           CHAIRMANN HERMANN: I think I can appreciate  
6           that, Ed, but my only question was where and  
7           how are you going to sample if you've got a  
8           dry ditch in which you're putting about twelve  
9           gallons a minute in from a lagoon if it's  
10          overflowing.  
11          MR. LAUX: Basically, the most times --  
12          CHAIRMAN HERMANN: Most times in the summer it  
13          isn't going to overflow, it's going to  
14          evaporate.  
15          MR. LAUX: The permit would indicate that the  
16          discharge would have to be going to the  
17          in-stream location. In other words, there  
18          would have to be flow from the lagoon to the  
19          in-stream location. And that's normally a  
20          requirement we would put into the permit so  
21          they don't simply go down to sample when  
22          there's nothing to sample.  
23          CHAIRMAN HERMANN: Okay, just a question.  
24          Chair would entertain a motion on the

1           variances request of the Cities of Luray and  
2           Revere.

3           COMMISSIONER PERRY: Does that need to  
4           be two different motions?

5           COMMISSIONER HARDECKE: I have - I have a  
6           question on the - where you would sample. You  
7           would sample after it's get to classified  
8           stream?

9           MR. LAUX: Basically, because the ammonia  
10          standard is both an acute and a chronic, we  
11          would need to monitor in the unclassified  
12          immediate receiving stream to determine  
13          conformance with the acute criteria and then  
14          look further downstream to assess whether the  
15          chronic criteria is also met in the classified  
16          stream. So it would include some monitoring  
17          of both the unclassified immediate receiving  
18          stream and then the classified stream  
19          downstream.

20          COMMISSIONER HARDECKE: Okay, so at what point  
21          on that classified stream are you going to go  
22          on? Private property or where do you --

23          MR. LAUX: Most of the time, what we do is look  
24          to the applicant to propose locations and if

1           they don't propose locations, then we would  
2           normally pick a bridge, someplace with public  
3           access. You know, if they want to go on  
4           private property and get somebody's approval,  
5           that's great. We would allow that. On the  
6           other hand, if we choose them, normally it's  
7           going to be a public assess location.

8           COMMISSIONER HARDECKE: You won't authorize them  
9           to go without?

10          MR. LAUX: I don't believe we can authorize  
11          trespass on public property. Again, unless  
12          they have some sort of agreement, just  
13          likewise with us, normally, that would be the  
14          case. If we need to sample on someone's  
15          property, we need - we need to make  
16          arrangements with them to do that sample.

17          COMMISSIONER HARDECKE: Okay.

18          CHAIRMAN HERMANN: I'm not sure how twelve  
19          gallons a minute would impact the Des Moines  
20          River, but I'll take your word for it. Randy?

21          MR. CLARKSON: I'm Randy Clarkson with Bartlett  
22          and West Engineers. These are our projects. I  
23          appreciate the staff recommendation to address  
24          this issue of - we had construction permits

1           and then the issue of the study came up and  
2           this is a good way to address that issue and I  
3           do appreciate this - and a recommendation for  
4           approval. The discussion is centered of a  
5           monitoring and I would like to address that  
6           very briefly. And it's a minor point, but  
7           since we decided to discuss it here, I have  
8           some thoughts about that. It's an aerated  
9           lagoon - a multi-cell aerated lagoon - a  
10          three-cell aerated lagoon with baffles, so  
11          it's not a single cell -

12         CHAIRMAN HERMANN: That was - that was the  
13          first question. The agenda booklet says  
14          "single cell."

15         MR. CLARKSON: Well, it's multi-cell.  
16          Three-cell. CHAIRMAN HERMANN: Multi, okay.

17         MR. CLARKSON: Not evident, if you visited  
18          during construction, because they're floating  
19          --

20         CHAIRMAN HERMANN: Floating baffles.

21         MR. CLARKSON: membrane baffles and aerated,  
22          so we don't anticipate ammonia would be an  
23          issue at any time of the year in the  
24          unclassified stream. You know, and - and the

1        ammonia we'll monitor if necessary, but I  
2        think that - I would expect that the staff  
3        would agree that with an aerated lagoon and  
4        the acute limits for ammonia, there's very  
5        little likelihood that you would, under any  
6        circumstance, have an issue there. The one  
7        that goes to the Des Moines River, again,  
8        that's difficult for me to imagine any issue -  
9        potential issue there. You can add in-stream  
10       monitoring as a condition of the variance, but  
11       normally, you do that if there's a reason to  
12       believe there could be an issue. I don't see  
13       why we would think that in the one that goes  
14       to the Des Moines River. The other one, I  
15       don't think there would be, but I can  
16       understand that one monitoring where the  
17       unclassified stream hits the classified stream  
18       or subsequent to that juncture would make of  
19       the - of the - all the proposed monitoring,  
20       that would probably to me make the most sense.  
21       To the rest of it, I don't - unless there's a  
22       point of determining what the ammonia level is  
23       in the one that goes to the classified stream  
24       so that they - they can make some



1       determination as to - if you find ammonia  
2       where it is classified maybe relating it or  
3       something. I really don't see any point of  
4       the one that goes to the Des Moines. There's  
5       no likelihood of ammonia problem in  
6       unclassified or in the Des Moines River. This  
7       is not per realistic expectation. But, they  
8       will live with it. It's just that these are  
9       low income folks, and we just want to keep the  
10      cost in line. Reasonable cost, sure. You  
11      know, if it's something that they're doing  
12      just because maybe there's not a clear  
13      understanding, we'd just as soon avoid that -  
14      that part of the cost.

15      CHAIRMAN HERMANN: What duration or what  
16      intensity of sampling would you anticipate,  
17      Richard?

18      MR. LAUX: Again, these are low flows. I  
19      wouldn't imagine this is going to be very  
20      frequent and the whole point, really, is we  
21      expect the permit holders to be the ones to  
22      propose the monitoring that they believe be  
23      appropriate. Staff does not have any  
24      indication now - there's no model been done,

1           no rough desktop calculations basically  
2           proving or showing what Randy just said that  
3           we hope not to see a problem. Not that we're  
4           expecting a problem, but we do need some  
5           documentation that we don't have such a problem.  
6           So, we're not looking for anything very  
7           frequent with these lower flow streams.  
8           Basically, we would hope that they would  
9           propose some frequency, perhaps, four or five  
10          times in the first year, and they would put it  
11          to bed after a year or two. What we're really  
12          needing is some assurance that the facility  
13          that was built is going to protect in-stream  
14          water quality. Obviously, we wouldn't be  
15          recommending approval if we had severe or  
16          significant concerns along those lines. We're  
17          just going to need some documentation  
18          eventually to put the issue to bed.

19       CHAIRMAN HERMANN: Okay, thank you. We now  
20       have a motion relative to City of Luray.

21       COMMISSIONER PERRY: Can I ask one more  
22       question?

23       CHAIRMAN HERMANN: Yes, ma'am.

24       COMMISSIONER PERRY: I'm having a - I'm

1       having a little trouble reading what's written  
2       here. First of all, if I understand, it says,  
3       "Due to budget costs, staff members involved  
4       with these activities have been assigned to  
5       other tasks and are no longer available to  
6       perform studies for most applicants."  
7       MR. LAUX: This is, basically, a little bit of  
8       history. I think you've been - had a  
9       presentation or two on this from Peter.  
10      Essentially, in the past, we attempted to do  
11      some sort of modeling efforts, some sort of  
12      predictive analysis on most new discharges.  
13      We are not in a position to do that. There's  
14      no mandate that we do that. There's no  
15      requirement in the rules that we actually do  
16      that. The requirement in the rule is actually  
17      a Design Engineer would do a predictive type  
18      analysis for facilities that are twenty-two  
19      thousand five hundred and greater. These  
20      facilities are under that. There's still a  
21      requirement in the rule that this study occur  
22      before we issue permits for these things. We  
23      weren't, basically, requiring the studies  
24      until we got comments that we were ignoring

1       our own rules. That created a focus on this  
2       issue and the decision that was made is that  
3       we would attempt to do the predictive analysis  
4       for things like grant projects, but that we  
5       really aren't staffed to do them for other  
6       sorts of projects. In this case, the analysis  
7       wasn't done ahead of time by anyone and so  
8       what we're proposing since they're essentially  
9       complete and ready to be used, is to allow  
10      their use and then substitute the stream  
11      monitoring instead.

12      COMMISSIONER PERRY: I don't have a  
13      problem with that, but I - I would like - the  
14      next one sentence after that, "In several  
15      instances where such studies were not  
16      conducted, lagoons recently built have not  
17      adequate - adequately protected the receiving  
18      waters; however, most examples are in areas  
19      with good water clarity and well established  
20      port fishing."

21      MR. LAUX: We have several 303d  
22      lagoons that are on the 303d-list  
23      as creating problems. Several of those are  
24      fairly new facilities, so will have to be

1           upgraded. No studies were done is those  
2           instances, either, and they're inclusion on  
3           the 303d list indicates that they  
4           have not protected the receiving stream. If  
5           you want actual names, I can probably get  
6           them. I don't have them today --  
7           COMMISSIONER PERRY: No, but does that  
8           have --  
9           CHAIRMAN HERMANN: I might like that, Richard.  
10          COMMISSIONER PERRY: is that predictive  
11          in this situation?  
12          MR. LAUX: No, I think the point there --  
13          COMMISSIONER PERRY: Because I just -  
14          that's why I don't understand why are we  
15          considering that information?  
16          MR. LAUX: This same language was included in  
17          the one we did on Ludlow and was carried over  
18          as, basically, still - we're talking north  
19          Missouri streams. They're not in the area  
20          where we've seen lagoons not be protected.  
21          So, again, it was just consistent with the  
22          previous staff recommendations with the  
23          language we used in that case for Ludlow. It  
24          seemed pretty applicable here for Revere and

1           Luray so we recycled.

2           MR. CLARKSON:  You know, I -

3           listening to Richard explain that and the

4           point of the sampling being, like in lieu of a

5           study that wasn't done ahead of time and he's

6           talking about a minimal amount of sampling,

7           even though we know from data from other

8           facilities what to expect, if that point is to

9           get that for the file, I think the Owner would

10          be agreeable to do so, particularly, because

11          we're talking about a limit of time.  I wasn't

12          aware that we're talking about limited time

13          frame.  I thought, maybe, we were going to be

14          sampling for ammonia on a fairly frequent

15          basis in multiple locations from now on.  And

16          that would be an issue, but a minimal time

17          frame document - this specific situation - I

18          think they would find that to be acceptable.

19          And - and with the - you know, the

20          understanding it's in lieu of that report or

21          that study that was not done by anybody ahead

22          of time.

23          COMMISSIONER HAUSER:  Richard, what kind of time

24          frame do you think would be appropriate?

1 MR. LAUX: For the monitoring, you mean?

2 COMMISSIONER HAUSER: Yes.

3 MR. LAUX: Probably, we would hope to have them  
4 put together some sort of proposal to do,  
5 maybe, quarterly for a year or two. Something  
6 to get us enough data points that we could  
7 actually stay - say statistically, with some  
8 significance, that, you know, we don't see a  
9 problem. Most of the time, the way we do that  
10 as permanent writers, is really look to the  
11 applicant to where you can get access. I  
12 mean, they're going to know the area better  
13 than we are. They're going to know access  
14 points. Then they can propose something in  
15 the way of frequency. We generally help out  
16 with the perimeters that we're interested in  
17 ensuring that are being met. On the other  
18 hand, I'm a permanent writer myself and in  
19 many instances, I simply look to the applicant  
20 to say, "Where can we get that sample?" and  
21 maybe how frequent they're willing to do it.  
22 The tradeoff is if, you know, if you go  
23 quarterly, it may take you a couple of years  
24 to get enough data points. If they want to

1 put something together where they get some  
2 information - six or seven data points in one  
3 year, we could probably put this to bed pretty  
4 quickly. It's hard to do anything with just a  
5 couple of data points, though.

6 COMMISSIONER HAUSER: I move that the  
7 Commission direct staff to public notice the  
8 intention of the Commission to grant final  
9 approval at the next meeting and incorporate  
10 monitoring for a time period not to exceed two  
11 years when we can - are certain that we are  
12 protective of water quality.

13 MR. GALBRAITH: Is that for both?

14 COMMISSIONER HAUSER: Yes.

15 COMMISSIONER PERRY: Do you have to  
16 indicate the number of data points? Or are we  
17 not going to do that?

18 MR. LAUX: I'd like to see Randy propose  
19 something on that.

20 COMMISSIONER HARDECKE: Second.

21 CHAIRMAN HERMANN: Any discussion?

22 COMMISSIONER PERRY: Just for  
23 clarification for both Revere and Luray?

24 COMMISSIONER HAUSER: Yes.



1           CHAIRMAN HERMANN: Call for the roll for the  
2           vote, Marlene.  
3           MS. KIRCHNER: Commissioner Hauser?  
4           COMMISSIONER HAUSER: Yes.  
5           MS. KIRCHNER: Commissioner Kelly?  
6           COMMISSIONER KELLY: Yes.  
7           MS. KIRCHNER: Commissioner Perry?  
8           COMMISSIONER PERRY: Yes.  
9           MS. KIRCHNER: Commissioner Hardecke?  
10          COMMISSIONER HARDECKE: Yes.  
11          MS. KIRCHNER: Commissioner Easley?  
12          COMMISSIONER EASLEY: Yes.  
13          MS. KIRCHNER: Chairman Hermann?  
14          CHAIRMAN HERMANN: Yes. Richard, I want to  
15          sing an old song to you, which you've heard me  
16          sing before. Paragraph 8B3 of 7.015. "The  
17          limitations of Paragraphs 8B1 and 2 will be  
18          effective unless water quality impact study  
19          has been conducted by the Department, are  
20          conducted by the Permittee and approved by the  
21          Department." It's not incumbent on the  
22          permittee to do it.  
23          MR. LAUX: Likewise, it's not mandated that the  
24          Department do it either. It's an option for

1           --

2           CHAIRMAN HERMANN:  Either/or.

3           MR. LAUX:  Right.

4           CHAIRMAN HERMANN:  Sometime in the future, I'd  
5           like to address these little bitty flow -  
6           small flow streams.  Okay, City of Sullivan  
7           variance.  I'm sorry, I forgot to ask.  Was  
8           there anybody other than Randy representing  
9           the cities?

10          MR. LAUX:  I don't think so.

11          CHAIRMAN HERMANN:  Okay.  **The City of**  
12          **Sullivan.**

13          MR. LAUX:  Basically at the last meeting, the  
14          Commission voted to direct staff to public  
15          notice its intention to approve this variance  
16          at this meeting.  Recap its - they - they want  
17          to continue to use their lagoon system until  
18          they can get it replaced.  I believe the  
19          Commission modified our recommendation that  
20          the final approval be only until December 31,  
21          2007, and we included that in the public  
22          notice.  We did not receive any comments  
23          during that public notice period, so we're  
24          back here to recommend final action and we

1           have recommended approval.

2           CHAIRMAN HERMANN:   Yeah.

3           MR. LAUX:   And I'm not sure if there's anyone  
4           here today from the City or not.

5           CHAIRMAN HERMANN:   I see you - in the agenda,  
6           you have an update on Sullivan.   Maybe I'll  
7           ask the question now and you can chime in.  
8           What's the status of the review of the  
9           facility plan, which was submitted in  
10          November, 2004?

11          MR. GALBRAITH:   The - the - the - actually,  
12          the first step was to get the water quality  
13          review sheet completed and that was completed  
14          two weeks ago.   We have not heard back from  
15          the City or the consultants regarding their  
16          reaction to that.   They were - the BOD and -  
17          and NFR limits were as - I think what  
18          everybody assumed, the ammonia limits are  
19          slightly more stringent and that - that may be  
20          the one sticking point, but I'm sure we can  
21          work through that.   I believe the permit  
22          engineer's in the middle of reviewing the  
23          facility plan at this time and going through  
24          the checklist on the SRF - the SRF checklist.

1 I think that there are - still some  
2 outstanding issues on - they're wanting to  
3 perhaps retain the lagoon system as an INI  
4 storage or sludge storage. We're looking at  
5 those options with them. I think we need to  
6 get some more information from them on that.  
7 So, things have - have moved forward and  
8 they're making this the highest priority for  
9 this particular permit engineer.

10 CHAIRMAN HERMANN: And they contend in their  
11 backup data that they've - they are currently  
12 above their permitted limit, which they state  
13 is fourteen thousand three hundred fifty  
14 equivalent. City of Sullivan, which is not  
15 one hundred percent connected, was listed in  
16 the 2000 census as six thousand three hundred  
17 fifty-one. Oak Grove Village was listed in  
18 the 2000 census as three hundred eighty-two.  
19 Where's the rest of their fourteen hundred -  
20 fourteen thousand three hundred fifty come  
21 from? But I guess more importantly, one of  
22 the things that we directed staff to do was to  
23 define no significant sewer extensions until  
24 the project is complete and your

1        recommendation in the booklet says, "No  
2        individual sewer extension over one hundred  
3        thousand gallons per day design flow and total  
4        extensions during this period be kept at three  
5        hundred thousand gallons per day design flow."  
6        That's more than significant.

7        MR. LAUX: We talked to the Regional Office.  
8        The three hundred thousand will take them from  
9        their current average flow to their design  
10       flow. So, the three hundred thousand, that's  
11       how it was arrived at. The individual one for  
12       hundred thousand was based on looking back at  
13       Sullivan's request for sewer extensions and  
14       they had some that were over ninety thousand.  
15       I believe they have picked up, like, some  
16       trailer parks and some other areas outside the  
17       city limits that they are providing service  
18       for, similar to - they provide service to Oak  
19       Grove. They're the regional facility. So, in  
20       talking to the Regional Office, they suggested  
21       these numbers as something that they felt that  
22       the City could live with and we could live  
23       with in that it wouldn't take them over their  
24       current design flow with the lagoon.

1           CHAIRMAN HERMANN: But at the same time,  
2           they're discharging to a losing stream, so  
3           they're in violation of the standards and the  
4           severe collapse potential defined by USGS is  
5           still a significant concern. Well, I don't  
6           think that's a no significant sewer extension  
7           to allow a hundred thousand to three hundred  
8           thousand gallon addition to that plan before  
9           it's replaced.

10          MR. LAUX: Again, you'd asked the question. We  
11          got with the Region. This is what they had  
12          recommended, but certainly, it's within your  
13          purview to change those figures if you need  
14          to. And I don't think staff has a strong  
15          opinion on these numbers. It was just we felt  
16          we could accept because it wouldn't take them  
17          over their design flow, which, in theory, they  
18          could be discharging tomorrow if they wanted  
19          to, so to speak.

20          CHAIRMAN HERMANN: Well, I know West Sullivan  
21          was reported to be a hundred seventy-five at  
22          the present time. I don't know what Woodland  
23          Heights' population is, but I think it's  
24          probably about the same size. And a trailer

1 park is, maybe, four hundred.

2 MR. LAUX: According to the Region, they - they  
3 have encouraged Sullivan to pick up some of  
4 these places that are outside the city limits  
5 and the City has been willing to do that. So,  
6 we're shooting for that regionalization  
7 approach, but obviously, this facility is an  
8 old facility and there are some concerns, as  
9 you mentioned, about collapse potential, in  
10 particular.

11 COMMISSIONER HAUSER: Would those type of  
12 additions increase the likelihood of collapse?

13 MR. LAUX: I think from the standpoint, you  
14 know, of any additional volume in there,  
15 there's some potential for that. But when we  
16 talk collapse potential, generally, we're  
17 talking about something that's geologic time  
18 frames rather than something that's an  
19 immediate threat. They argued the collapse  
20 potential. They had some geologist come in  
21 and try to argue that they didn't believe  
22 there was significant collapse potential. I  
23 believe that, in the end, everybody kind of  
24 agreed that there is the potential there and

1       it wasn't, probably, our top concern. The top  
2       concern is this stuff does disappear and go  
3       subsurface and people in this area do use  
4       groundwater for drinking water purposes. So I  
5       think the staff concern has mainly been on the  
6       effluent, going to a losing stream. Collapse  
7       potential is there and is something we're  
8       discussing with them about potentially  
9       continuing to use these lagoons. I believe  
10      they want to. Staff has some concerns and,  
11      you know, believes that additional work would  
12      be needed to satisfy our concerns.

13      END OF TAPE THREE, SIDE A

14      BEGINNING TAPE THREE, SIDE B

15      do some work on a specific spot and it looks  
16      better than the surrounding area. Again, I  
17      don't think we've precluded their potential  
18      future use, but we have raised this concern.  
19      The geologists just have not - haven't changed  
20      their opinion that this area - there is  
21      collapse potential and, obviously, we do know  
22      that it goes to a losing stream and water does  
23      - pretty much disappear out of that stream and  
24      there are people with wells downstream.



1 CHAIRMAN HERMANN: Yeah, I think that's the  
2 greatest concern is their continued discharge  
3 to a losing stream. Winslow Creek is on the  
4 losing stream list in our - in our  
5 regulations.

6 MR. LAUX: And has been for some time.

7 CHAIRMAN HERMANN: Yes, right. And I think  
8 adding a hundred thousand - three hundred  
9 thousand gallons per day to that discharge -  
10 even more of a load on the - biological load  
11 on the lagoon than presently.

12 MR. LAUX: I think the Region for the hundred  
13 thousand had in mind that that could be a  
14 phase project. I think the - the one that was  
15 over ninety thousand is no place close to that  
16 yet. Only a few houses have been built, you  
17 know, but the extension was for that ninety  
18 thousand because that's going to be the  
19 ultimate - they hope to have that much flow at  
20 that subdivision. And, again, I'm just trying  
21 to explain where the numbers came from. When  
22 I did talk to Tom about - Tom Siegel about  
23 this, he didn't have any real strong feeling  
24 about a specific number so what they did was

1 look back at what they'd done with Sullivan  
2 over the last couple of years as far as sewer  
3 extensions went and they found, again, one  
4 that was big enough, and yet is not resulting  
5 in a lot of flow that they thought, well, they  
6 could do another one like that to continue to  
7 encourage regionalization if they needed to, and  
8 yet, hopefully not put that much of a load  
9 immediately on the plan. Now, if we hook the  
10 trailer park up, that'd be an immediate new  
11 loading, so, I mean, I do think this is an  
12 issue. What - how much are we going to allow  
13 in the way of extensions until they actually  
14 do replace the facility? I think staff's  
15 perception is we need to continue support  
16 regionalization and - and keep Sullivan as the  
17 regional authority. On the other hand, we  
18 have the same concerns you've expressed about  
19 continued use of the lagoon and its collapse  
20 potential.

21 CHAIRMAN HERMANN: Again, I think the primary  
22 concern, at least in my mind, is the - this  
23 losing stream characteristic and - and the  
24 additional biological load imported to that

1 stream. And I find it difficult to imagine  
2 that you can have a twenty-two percent  
3 increase of discharge in the City of Sullivan  
4 over two and a half years. December of 2007  
5 is two and a half years away and that's when  
6 they are supposed to have this thing completed  
7 and operational. Without the hundred thousand  
8 and three hundred thousand, I find nothing  
9 objectionable to your --

10 MR. LAUX: We could look at the issue of  
11 significant on a case-by-case basis and,  
12 perhaps, --

13 MR. GALBRAITH: That's what --

14 MR. LAUX: inform the Commission of any  
15 requests we get. Keep you aware of the  
16 amounts involved as a substitute rather than  
17 have the numbers in there, take the numbers  
18 out and, basically, make you guys aware of  
19 extensions as they come in for this period of  
20 time. I think we'd be more than comfortable  
21 with that.

22 CHAIRMAN HERMANN: Yeah, okay. Tell Tom  
23 Siegel I'll come down and pester him.

24 COMMISSIONER HARDECKE: Maybe I missed this, but

1 are they at their design capacity now?

2 MR. LAUX: They have roughly three hundred  
3 thousand gallons per day left for a capacity,  
4 so they are running roughly that amount under  
5 their existing design flow. They're actual  
6 flow is about three hundred thousand less than  
7 their design.

8 CHAIRMAN HERMANN: They say their design flow  
9 was 1.25 MGD.

10 MR. LAUX: For the existing facility. I  
11 believe the new one is going to be bigger.

12 CHAIRMAN HERMANN: Right. **The Chair will**  
13 **entertain a motion relative to the**  
14 **recommendation of the staff on Sullivan minus**  
15 **the one hundred thousand three hundred**  
16 **thousand limit?**

17 COMMISSIONER HARDECKE: I'll make that motion  
18 and that we review those extensions on a  
19 case-by-case basis.

20 CHAIRMAN HERMANN: Okay.

21 COMMISSIONER KELLY: Second the motion.

22 CHAIRMAN HERMANN: Moved and seconded. Any  
23 discussion? Please call for the vote,  
24 Marlene.

1 MS. KIRCHNER: Commissioner Kelly?  
2 COMMISSIONER KELLY: Yes.  
3 MS. KIRCHNER: Commissioner Perry?  
4 COMMISSIONER PERRY: Yes.  
5 MS. KIRCHNER: Commissioner Hardecke?  
6 COMMISSIONER HARDECKE: Yes.  
7 MS. KIRCHNER: Commissioner Easley?  
8 COMMISSIONER EASLEY: Yes.  
9 MS. KIRCHNER: Commissioner Hauser?  
10 COMMISSIONER HAUSER: Yes.  
11 MS. KIRCHNER: Chairman Hermann?  
12 CHAIRMAN HERMANN: Yes. Tab Nine, City of  
13 Moberly variance. Richard LAUX?  
14 MR. GALBRAITH: I believe what Richard is  
15 passing out are two letters written in support  
16 of the variance request. Is that correct,  
17 Richard?  
18 MR. LAUX: Correct. These were comments we  
19 received during the comment period. One's  
20 from the applicants' attorney and the other  
21 one's from the Metropolitan St. Louis Sewer  
22 District. Those were the only comments  
23 received during the comment period. At the  
24 last meeting, we had recommended preliminary

1 approval of the variance request by Moberly  
2 dealing with the CSO issue again and the  
3 forty-five forty-five, similar to the Macon  
4 request. The Commission, at that time, voted  
5 preliminary approval and directed staff to  
6 public notice their intention to approve at  
7 this meeting. And I believe these were the  
8 only two comments received, so staff is  
9 basically recommending final action today to  
10 approve the variance request. And there are  
11 people here from the City.

12 CHAIRMAN HERMANN: Mary?

13 MR. ROBERT BRUNDAGE: We - Robert Brundage, Attorney  
14 for City of Moberly. We had one question  
15 about the length of the variance. We would  
16 prefer a five-year variance and weren't - at  
17 least, I'm relatively new to representing the  
18 City and, Richard, could you remind me on why  
19 the Department recommended thirty months and  
20 would they be willing to go to five years?

21 MR. LAUX: This was a committee recommendation.  
22 We didn't know the term of the current permit  
23 at the time and they estimated that Commission  
24 action on the new rule might take place within

1       the thirty months when we originally proposed  
2       that several months ago. I don't believe that  
3       - speaking on behalf of the committee - I  
4       don't think we had a real strong opinion on  
5       this and would not be adverse to the five year  
6       period. Our thought had been that once the  
7       rule is modified, that any permit actions that  
8       happen after that would be in conformance with  
9       the new rule.

10      MR. BRUNDAGE: That would be okay with the  
11      City of Moberly if it was a five-year variance  
12      or, upon issuance of a rule that would, kind  
13      of, make this variance move to change of the  
14      regulations, in a way.

15      CHAIRMAN HERMANN: Okay. Any questions?

16      COMMISSIONER PERRY: Did we set a time limit  
17      on Macon?

18      CHAIRMAN HERMANN: Pardon?

19      COMMISSIONER PERRY: Did we set a time limit  
20      on Macon?

21      MR. LAUX: I believe on Macon you simply  
22      directed staff to public notice your intention  
23      to approve a final next time.

24      COMMISSIONER PERRY: Oh, okay, and now we're

1           at the next step. Yeah.

2           MR. LAUX: This one at the next step.

3           COMMISSIONER PERRY: Now we're saying it to

4           make the five-year.

5           COMMISSIONER HAUSER: I move that the

6           Commission accepts staff recommendation grant

7           final approval with five-year time period.

8           COMMISSIONER PERRY: I second.

9           CHAIRMAN HERMANN: Moved and seconded. Any

10          discussion? Please call the vote, Marlene.

11          MS. KIRCHNER: Commissioner Perry?

12          COMMISSIONER PERRY: Yes.

13          MS. KIRCHNER: Commissioner Hardecke?

14          COMMISSIONER HARDECKE: Yes.

15          MS. KIRCHNER: Commissioner Easley?

16          COMMISSIONER EASLEY: Yes.

17          MS. KIRCHNER: Commissioner Hauser?

18          COMMISSIONER HAUSER: Yes.

19          MS. KIRCHNER: Commissioner Kelly?

20          COMMISSIONER KELLY: Yes.

21          MS. KIRCHNER: Chairman Hermann?

22          CHAIRMAN HERMANN: Yes.

23          MR. BRUNDAGE: Thank you.

24          CHAIRMAN HERMANN: Okay, we're down to Tab



1 Ten.

2 MS. WEST: Thank you.

3 CHAIRMAN HERMANN: Thank you, Mary.

4 **Enforcement actions.** Kevin Mohammadi.

5 MR. MOHAMMADI: Good afternoon, Mr. Chairman,  
6 members of the Commission. (Microphone  
6 malfunction) **Duckett Creek Sanitary Sewer**  
7 **District** approximately - that's okay -  
8 approximately 8.3 million gallons of sewage  
9 directly into Dardenne Creek, which resulted in  
10 over seventy-seven thousand five hundred  
11 sixty-nine fish killed. Risk to public health  
12 and a severe impact to approximately 9.5 miles  
13 of Dardenne Creek. The District failed to notify  
14 the Department of the bypass until July 28,  
15 2004, and the public was not warned of the  
16 health hazard until a press release from the  
17 Department, July 29, 2004. The District has  
18 indicated that it does not believe that the  
19 Department has the statutory authority to  
20 impose civil penalty or to cover investigative  
21 costs and damages incurred by the State and  
22 has expressed its desire to try this matter  
23 before the Court. Since that, Mr. Chairman,  
24 this morning I met with Mr. Tom Engle,

1       Executive Director of the Sewer District, and  
2       if it is acceptable to the Commission, we  
3       agreed the matter to be referred to the Office  
4       of Attorney General contingent upon if the  
5       reasonable settlement agreement is reached  
6       within thirty days. Mr. Engle is over here if  
7       you wish to hear him.

8       CHAIRMAN HERMANN: Does he have anything to  
9       tell the Commission other than what you said -  
10      told us?

11      MR. ENGLE: No, I don't - I don't believe so.  
12      There's - there's - you know, we're not  
13      arguing a lot of facts in the case. There's  
14      just a few that are - that are our Board of  
15      Trustees are questioning along with their  
16      legal counsel. But, I think that - that with  
17      discussions we've had over the past week, I  
18      think that the likelihood is that - that we're  
19      reaching a settlement agreement with the staff  
20      within the next thirty days and then it will  
21      be moot. If we don't, then it does - then the  
22      proposal would give them the ability to - to  
23      file and settle it in court - settle those  
24      legal issues that we kind of - our Board

1 disagrees with a few. But, I - I do really  
2 think it will be settled within the next  
3 thirty days.

4 CHAIRMAN HERMANN: So the motion would be to  
5 refer it to the Attorney General's office if  
6 no settlement -

7 COMMISSIONER PERRY: In thirty days.

8 CHAIRMAN HERMANN: no settlement is agreed to?

9 MR. MOHAMMADI: Contingent upon if no  
10 settlement is reached --

11 CHAIRMAN HERMANN: Thirty days.

12 MR. MOHAMMADI: in thirty days.

13 CHAIRMAN HERMANN: Okay. Any questions? Any  
14 discussion?

15 COMMISSIONER PERRY: Can I say so moved?

16 CHAIRMAN HERMANN: Okay.

17 COMMISSIONER HARDECKE: Second.

18 CHAIRMAN HERMANN: Moved and seconded. Please  
19 call for the vote, Marlene?

20 MS. KIRCHNER: Commissioner Perry?

21 COMMISSIONER PERRY: Yes.

22 MS. KIRCHNER: Commissioner Hardecke?

23 COMMISSIONER HARDECKE: Yes.

24 MS. KIRCHNER: Commissioner Easley?

1 COMMISSIONER EASLEY: Yes.

2 MS. KIRCHNER: Commissioner Hauser?

3 COMMISSIONER HAUSER: Yes.

4 MS. KIRCHNER: Commissioner Kelly?

5 COMMISSIONER KELLY: Yes.

6 MS. KIRCHNER: Chairman Hermann?

7 CHAIRMAN HERMANN: Yes.

8 MR. MOHAMMADI: The next item is **Robert**

9 **Watkins, Emerald Court Duplexes.** Emerald

10 Court Duplexes consist of ten units located in  
11 Camden County, Missouri, and is owned and  
12 operated by Mr. Robert Watkins. The waste for  
13 the treatment system serving the duplexes is a  
14 recirculating sand filter that discharges  
15 effluent to an unnamed - unnamed losing  
16 territory pursuant to the State operating  
17 permit. This permit requires submittal of  
18 quarterly discharge monitoring the more than  
19 annual sludge report. Ever since 2000, Mr.  
20 Watkins has failed to submit discharge,  
21 monitoring and sludge reports. The Department  
22 has made several attempts to resolve this  
23 matter through out of Court settlement and  
24 matter and Mr. Watkins has failed to respond

1 to these offers; therefore, it's recommended  
2 that the matter be referred to the Office of  
3 Attorney General office for appropriate legal  
4 action.

5 CHAIRMAN HERMANN: Anyone here representing  
6 Mr. Robert Watkins? There are none. The  
7 Chair will entertain to motion relative to  
8 Emerald Court Duplexes?

9 COMMISSIONER HAUSER: I move we refer this  
10 matter to the Attorney General's office.

11 COMMISSIONER Easley: Second the motion.

12 CHAIRMAN HERMANN: Moved and seconded.  
13 Discussion? Please call for the vote,  
14 Marlene?

15 MS. KIRCHNER: Commissioner Easley?

16 COMMISSIONER EASLEY? Yes.

17 MS. KIRCHNER: Commissioner Hauser?

18 COMMISSIONER HAUSER: Yes.

19 MS. KIRCHNER: Commissioner Kelly?

20 COMMISSIONER KELLY: Yes.

21 MS. KIRCHNER: Commissioner Perry?

22 COMMISSIONER PERRY: Yes.

23 MS. KIRCHNER: Commissioner Hardecke?

24 COMMISSIONER HARDECKE: Yes.

1           **MS. KIRCHNER: Chairman Hermann?**

2           **CHAIRMAN HERMANN: Yes.**

3           MR. MOHAMMADI: The next matter is **Tuscany**  
4           **Village**, Mr. Charles Bonnot, Stone County. Mr.  
5           Charles Bonnot's cleared more than fifteen  
6           acres of land for the purpose of creating a  
7           residential development known as Tuscany  
8           Village and is located in Stone County. Storm  
9           weather from the property discharges to Table  
10          Rock Lake. The property was ??? without a  
11          state operating permit and best management  
12          practices for erosion and sediment control  
13          were not installed until requested by the  
14          Department. To date, the Department has not  
15          received an adequate storm weather prevention  
16          plan. Adequate BMP's to prevent sediment from  
17          eroding offsite have not been installed and  
18          the BMP's that were installed have not been  
19          maintained. We have been in negotiation of an  
20          out of Court settlement since November 2004.  
21          To date, we have not come to an agreement with  
22          the Owner on the civil penalty where the site  
23          continued to be in non-compliance; therefore,  
24          it's recommended the matter to be referred to

1 the Office of Attorney General.

2 CHAIRMAN HERMANN: Anyone here representing  
3 Mr. Charles Bonnot? Bearing none, Chair would  
4 entertain a motion relative to Tuscany  
5 Village?

6 **COMMISSIONER HAUSER: I move we refer this**  
7 **matter to the Attorney General's office.**

8 COMMISSIONER PERRY: Can I ask one question?

9 MR. MOHAMMADI: Sure.

10 COMMISSIONER PERRY: Sorry, I think I might be  
11 out of order, but has that land gone on to be  
12 developed?

13 MR. MOHAMMADI: Yes.

14 COMMISSIONER PERRY: Is it done?

15 MR. MOHAMMADI: It's in process of - not  
16 completed.

17 COMMISSIONER PERRY: And none of the  
18 protections have been put in place during that  
19 time?

20 MR. MOHAMMADI: There are some BMP's, but they  
21 are not adequate.

22 COMMISSIONER PERRY: I second the motion.

23 COMMISSIONER HARDECKE: What additional  
24 protection is needed?

1 MR. MOHAMMADI: Additional silt fences, straw  
2 bale, sedimentation basin, vegetation.  
3 COMMISSIONER HAUSER: It says in here that he  
4 had seeded it, right?  
5 MR. MOHAMMADI: Yeah, but the vegetation has  
6 not established - has not been established.  
7 COMMISSIONER EASLEY: What's the dollar amount  
8 of the civil penalty?  
9 MR. MOHAMMADI: I believe original amount was  
10 thirty-two thousand dollars.  
11 COMMISSIONER EASLEY: Have they offered a  
12 lesser amount?  
13 MR. MOHAMMADI: Yes, they have and we did have  
14 a counter offer, but they were - would not  
15 receptive.  
16 COMMISSIONER HARDECKE: And how was that amount  
17 calculated?  
18 MR. MOHAMMADI: Under our Chapter Three  
19 administrative penalty rule.  
20 COMMISSIONER EASLEY: I notice here in your  
21 letter you - you state that, "Since November  
22 the 15th, staff has attempted to resolve this  
23 matter, but are unable to reach an agreement  
24 with Mr. Bonnot." How recent have you talked



1           with --

2           MR. MOHAMMADI: I personally talked to him - I  
3           believe it was April 9th and I asked him if he  
4           could get back with us by following week,  
5           which was like April 15 so that we - we would  
6           know whether we will include this matter in  
7           the packet for referral to the Office of  
8           Attorney General office and he said he will do  
9           that, but we never heard back from him.

10          COMMISSIONER EASLEY: So the last ninety days  
11          you have had no contact with him?

12          MR. MOHAMMADI: No, I have not.

13          COMMISSIONER HARDECKE: So if he had put up the  
14          straw bales or silt fences, this would have  
15          not been a violation?

16          MR. MOHAMMADI: Originally, if he has applied  
17          for a permit from us, as part of that permit,  
18          there are some conditions that explains  
19          clearly what are the steps he needs to take in  
20          order to prevent erosion from the site. This  
21          would not have been the case. And even that,  
22          the subsequence to obtaining a permit from us,  
23          if he has followed terms and conditions of  
24          that permit, that's true. We would have him

1           here today.

2           COMMISSIONER HARDECKE: Was he aware that he  
3           needed a permit when he cleared the land?

4           MR. MOHAMMADI: He's a big developer. He's  
5           been around for quite some times and I'm sure  
6           he does through his trade association. But we  
7           are talking about several issues over here.  
8           Number one is the permit and then once we  
9           required him to get a permit, he did not  
10          follow the terms and condition of the permit.  
11          So obtaining the permit by itself is not going  
12          to protect the environment. On this, you  
13          comply with terms of that permit, which, in  
14          this particular situation, Mr. Bonnot did not.

15  
16          MR. GALBRAITH: Just for - I might add  
17          here - this issue of not following BMP's  
18          around Table Rock Lake is - is - this might -  
19          this particular one might seem like a small,  
20          you know, for teenagers not a big deal, but  
21          this is a major problem down there because of  
22          all the development that's going on and it's  
23          been identified as a - as a real - a real  
24          contributor to the decrease in water quality

1           in Table Rock, which has a direct economic  
2           impact to - to the tourist industry and the -  
3           and to the economy down there so while this  
4           may seem - as an isolated incident might seem  
5           not that big a deal, in the context of all the  
6           development and all the - all the - in  
7           fairness to all the developers who are getting  
8           their permits and doing their BMP, I - I just  
9           - I guess I just want to throw that  
10          perspective into - into the mix here for the  
11          Commission's benefit.

12         CHAIRMAN HERMANN: And it becomes more serious  
13         down there because of the slopes of the ground  
14         and because of the erodibility of the soils in  
15         the area and it's a significant problem.

16         COMMISSIONER HAUSER: And he was provided  
17         notice of the agenda item today?

18         MR. MOHAMMADI: Yes, he was, on the emphasis  
19         that it was being presented to you, they've  
20         been sent certified letter that they will be  
21         introduced to the Commission for referral.  
22         And Commissioner Easley, in the answer to your  
23         question, the dollar amount was thirty  
24         thousand dollars. That was the original

1 demand, but we reduced it substantially from  
2 that.

3 COMMISSIONER EASLEY: Well, I move that we  
4 refer this to the Attorney General --

5 COMMISSIONER HAUSER: I believe we have a  
6 motion on this.

7 COMMISSIONER PERRY: A motion and second.

8 CHAIRMAN HERMANN: Do we? Okay, let's vote on  
9 it.

10 COMMISSIONER HAUSER: Yeah, I moved and  
11 Kristin seconded it, I believe.

12 CHAIRMAN HERMANN: Oh, I'm sorry.

13 COMMISSIONER PERRY: Not that anybody noticed.

14 CHAIRMAN HERMANN: If I had known that, I  
15 would have cut off discussion a long time ago.

16 Call for the vote, Marlene, please?

17 MS. KIRCHNER: Commissioner Hauser?

18 COMMISSIONER HAUSER: Yes.

19 MS. KIRCHNER: Commissioner Kelly?

20 COMMISSIONER KELLY: Yes.

21 MS. KIRCHNER: Commissioner Perry?

22 COMMISSIONER PERRY: Yes.

23 MS. KIRCHNER: Commissioner Hardecke?

24 COMMISSIONER HARDECKE: Yes.

1 MS. KIRCHNER: Commissioner Easley?

2 COMMISSIONER EASLEY: Yes.

3 MS. KIRCHNER: Chairman Hermann?

4 CHAIRMAN HERMANN: Yes.

5 MR. MOHAMMADI: Next matter is **Millennium**

6 **Environmental**. Millennium Environmental owns

7 - -

8 MR. GALBRAITH: Kevin, if I may, I

9 grouped all the - all the penalty ones under  
10 one tab since they're all - they all have to  
11 do with payment of - of, you know, permit  
12 fees. I grouped them in this way for the  
13 Commission's convenience, in case you want to  
14 refer them all with - you can take them  
15 individually or refer them all with one  
16 referral just for, you know, for convenience.  
17 It's really up to the Commission, but -  
18 they're virtually - I mean they're virtually  
19 identical.

20 MR. MOHAMMADI: Yes, yes, they are.

21 COMMISSIONER EASLEY: Are they all in  
22 bankruptcy?

23 MR. BRYAN: Millennium Environmental was in  
24 bankruptcy quite a while ago, but the Court dismissed the

1       bankruptcy because there was zero assets and  
2       they no longer exist, to the best of my  
3       knowledge.

4       COMMISSIONER EASLEY:  So, is there any kind of  
5       realistic expectation that you can collect  
6       these fees?

7       MR. MOHAMMADI:  There is good possibility, but  
8       the reason, Mr. Easley, we are referring this  
9       to the Office of Attorney General office  
10      because it will not be handled by  
11      Environmental Division, it would be turned  
12      over their Collection Division and Collection  
13      Division follow this up if something comes up,  
14      they will fight for State claim.

15      MR. GALBRAITH:  And that's true of all  
16      these?  All four of these?  They would go to  
17      the Collections Branch, if you will, of the  
18      Attorney General's office, not the - not the  
19      environmental program?

20      MR. BRYAN:  That's true, but there - there is  
21      no limit.  There's no money.

22      MR. GALBRAITH:  There might be -  
23      someday.

24      COMMISSIONER PERRY:  So it's got to stop sometime.

1 COMMISSIONER EASLEY: Take it on a contingency  
2 basis, are you?

3 COMMISSIONER PERRY: Did you say it's in  
4 somebody's estate? Is that what you said?

5 MR. BRYAN: Not to my knowledge.

6 COMMISSIONER PERRY: Bankruptcy.  
7 It's not in bankruptcy there's no assets.

8 MR. MOHAMMADI: Some of them they're not. The  
9 Millennium is not, according to Mr. Bryan.

10 CHAIRMAN HERMANN: So are you suggesting this  
11 blockage?

12 COMMISSIONER PERRY: And can you just tell me,  
13 it says, when you say, "The permit fee balance  
14 is now," is that something that has been  
15 increasing?

16 MR. MOHAMMADI: It keeps - accumulates because  
17 of the interest.

18 COMMISSIONER PERRY: Okay, and so - then it  
19 says, "Late penalty fee." That's different?

20 MR. MOHAMMADI: That's - that's correct. Every  
21 year, that permit - permit fee's not paid or  
22 the permit is not being terminated, you get  
23 the annual fee in addition to late payment  
24 fee, which is same as penalty.

1 COMMISSIONER PERRY: Oh, okay. What is the  
2 annual fee?

3 MR. MOHAMMADI: Annual fee on this particular  
4 one - if I had to guess, I would say probably  
5 fifteen hundred dollars a year.

6 COMMISSIONER PERRY: That turned out to be the  
7 same as the next one.

8 COMMISSIONER EASLEY: Well, does this create a  
9 - a judgment and a lien on the property in  
10 case it becomes of some value at some future  
11 date?

12 COMMISSIONER PERRY: Is there property?

13 MR. BRYAN: There may not have been. There  
14 are no assets, as I understand it (off  
15 microphone) other problems with (off  
16 microphone). I'm not aware of there being any  
17 assets out there. We're - we don't have cases  
18 like this, but I just want you to know there's  
19 not a likelihood of (off microphone).

20 COMMISSIONER HARDECKE: What kind of operation  
21 was this?

22 MR. BRYAN: I think it was a hazardous waste  
23 site.

24 Mr. Galbraith: Yeah, it was a



1 hazardous waste treatment storage - treatment  
2 and storage facility. So they took solvent  
3 waste and - yeah, but there's no - I believe  
4 the hazardous waste is all gone. We - the  
5 Department paid for some of it and they took  
6 their financial assurance instrument and paid  
7 for some of the rest of the cleanup.

8 COMMISSIONER PERRY: Mr. Bryan, if we refer  
9 this to you and there's no assets, you guys  
10 just abandon it at your level or ?

11 MR. BRYAN: That's what we'll do is we'll -  
12 we'll make an assessment in the case and determine  
13 whether or not it's reasonable to proceed in  
14 judgment because we can get a judgment, but  
15 the penalties are going to continue to accrue  
16 off (off microphone). There will be a decision  
17 made whether to do that or not. We can make  
18 that decision today (off microphone).

19 **COMMISSIONER EASLEY: I would like to make a**  
20 **motion that we refer all four of these cases**  
21 **to the Attorney General's office.**

22 MR. BRYAN: With that in mind, there's one of  
24 the other facilities also is the same with a similar  
25 situation, AFI. It wont effect the motion, just for your

1 information, AFI also falls into that.

2 COMMISSIONER EASLEY: Include AFI.

3 COMMISSIONER HAUSER: I'll second that motion.

4 CHAIRMAN HERMANN: Okay. Any discussion?

5 That's different from before that we have in the booklet?

6 moved and seconded. Please call for the vote, Marlene.

7 MS. KIRCHNER: Commissioner Hauser?

8 COMMISSIONER HAUSER: Yes.

9 MS. KIRCHNER: Commissioner Kelly?

10 COMMISSIONER KELLY: Yes.

11 MS. KIRCHNER: Commissioner Perry?

12 COMMISSIONER PERRY: Yes.

13 MS. KIRCHNER: Commissioner Easley?

14 COMMISSIONER EASLEY: Yes.

15 MS. KIRCHNER: Chairman Hermann?

16 CHAIRMAN HERMANN: Yes.

17 MR. MOHAMMADI: Thank you.

18 CHAIRMAN HERMANN: Thank you. We need a

19 Sullivan - City of Sullivan update?

20 MR. GALBRAITH: No, I covered it.

21 CHAIRMAN HERMANN: **The State Revolving Fund**

22 **update.** Doug Garrett? That's a -

23 MR. GALBRAITH: Fourteen.

24 CHAIRMAN HERMANN: Fourteen? It doesn't have

1           one, right?

2           MR. GALBRAITH: Well, Doug's here.

3           MR. GARRETT: In keeping with the guidance and the Intended  
4           Use Plan that we talked about at the last Commission  
5           meeting, we will be moving the City of Ozark up to the  
6           fundable list for their project they have requested that  
7           their project be split.

8           That the expansion of the wastewater  
9           treatment plant be separated from the new  
10          proposed Elk Valley Wastewater Treatment  
11          Plant at this time. So we will be doing that  
12          per their request, which will allow them to  
13          proceed with the wastewater treatment  
14          expansion, some lift station, work and forcemain for eight  
15          million dollars and the remainder fourteen  
16          million dollars will be targeted for the new  
17          Elk Valley plant. Additionally, the City of  
18          Seneca, they have proposed doing collection  
19          and wastewater treatment project for  
20          approximately seven million dollars. The  
21          wastewater treatment facility is located in  
22          and permitted by the State of Oklahoma. The  
23          City of Seneca has also been working with the  
24          Eastern Shawnee tribe, which is located in  
25          Oklahoma, so that they wanted to be sewered as  
26          well and have their wastewater go to the

24 Seneca wastewater treatment plant. Due to

1 working with the Native American tribes, the

2 State of Oklahoma, as well as our own agency,

3 the City has been requested that their project

4 be split to go ahead and do their collection

5 system work and the State of Oklahoma does not

6 have a problem with that as it relates to

7 capacity of the wastewater treatment plant.

8 So we will be splitting that project,

9 approximately 1.6 million so the City can

10 proceed with their collection system to sewer

11 some of the unsewered areas of the community.

12 And we will continue work with the City, other

13 federal agencies and the State of Oklahoma to

14 get the wastewater treatment plant upgraded

15 and expand - expanded in the next few years.

16 We also have received an application from the

17 City of Rolla and we will be placing them on

18 our project list in the IUP as appropriate,

19 in accordance with the readiness to proceed provisions.

20 And finally, as you may have heard

21 previously, we went through a period of about

22 six weeks now without a bond council for the

23 SRF program. As a result of that, we've had

24 to delay some of our direct loans. I - I'm

1 happy to say that the EIERA Board has made a  
2 motion at their Board meeting the other week  
3 to accept Gilmore and Bell as bond counsel  
4 Fields and Brown to serve as co-bond counsel, so  
5 we'll be working once again with Chris Ahrens  
6 and his staff on the SRF closings down the  
7 road.

8 MR. GALBRAITH Any questions for Doug?

9 MR. GARRETT: Questions?

9 CHAIRMAN HERMANN: Thank you, Doug. Phil Schroeder knows  
10 its his  
11 turn. He disappeared out the door. Try to be  
12 low profile? **UAA update.**

13 MR. GALBRAITH: Phil, do you need help running  
14 the show? Want me to flip slides?

15 MR. PHIL SCHROEDER: Thank you. My packet -  
16 or the packet before you says that I have a  
17 handout for you, but I don't. What I thought  
18 I would do is just go through some PowerPoint  
19 presentation slides here, that way the  
20 audience can benefit from some of the things  
21 you'll be seeing and some of the things we've  
22 been experiencing with respect to  
23 use attainability now since reviews over the last  
24 several weeks and what we look forward to over

1       the next couple of weeks or so. Hopefully, at  
2       the end of this, you'll understand what we're  
3       going through and maybe even have some advice  
4       for us and some ideas about whether or not  
5       we're really following the protocol as you  
6       would expect it should be followed. Why don't  
7       you go ahead and advance that one slide. What  
8       we're focusing on is the recreational uses  
9       and our use attainability analyses. Primarily,  
10      we're looking at - look at the whole body  
11      content recreational uses of the streams in  
12      the State of Missouri. As far as I know, no  
13      one is doing a UAA on boating or canoeing or  
14      secondary recreational uses at this time. All  
15      of the ones that we've received are - are on  
16      the primary use. This is where the water body  
17      would be sufficient to lend a complete body  
18      submergence and may lead to some accidental  
19      ingestion during that activity.  
20      The - the universe of waters that we're  
21      really targeting is highlighted here in  
22      yellow. That is sixteen thousand miles of  
23      streams in the State of Missouri that are  
24      classified, yet, are not designated for whole

1       body contact recreational use. As you know,  
2       the Water Quality standards are - in the midst  
3       of being proposed to designate these waters as  
4       full sixteen thousand miles of streams for  
5       whole body contact recreation. Some of those,  
6       we believe, aren't really able to support a  
7       whole body contact recreational use, so,  
8       therefore, some of those are being targeted  
8       for UAA's. Go ahead, Ed.  
9       To kind of give you an  
10       idea of how many are actually being targeted.  
11       Even a bigger picture than what I just shown  
12       you, this is a pie chart of all waters of the  
13       state as far as streams and stream miles are  
14       concerned. That is, if you consider that  
15       there's about a hundred thousand miles of  
16       streams in the State of Missouri. What you  
17       see color coded in blue and red are the  
18       classified waters, so you can see less than a  
19       quarter of the streams in the State of  
20       Missouri are actually classified and of that  
21       total, as I just showed you, there's about  
22       twenty-two thousand of classified waters, but  
23       there's only sixteen thousand miles of that  
24       total that's not currently designated for

1 whole body contact recreation, which leaves  
2 about - what is that - six percent that's  
3 actually designated for whole body contact  
4 recreation. Now, what we're going to be  
5 focused on is this sixteen thousand miles and  
6 of that, right now, we're looking at about  
7 three percent of that total for actual  
8 use attainability analysis. We're  
9 looking at criterion two of six criteria in the  
10 Commission's protocol. Criterion two reads  
11 that - it's a look at natural ephemeral, intermittent,  
12 or low flow conditions or water levels that  
13 present the - prevent the attainment of a use.

14 Basically, in a Commission's protocol, we're  
15 looking at water depth. Water depth - well,  
16 in employing criterion two, there's really a  
17 two-test process in the protocol. One is that  
18 we're looking to see if it's attainable due to  
19 - or unattainable due to shallow depth, as I  
20 mentioned. But also we're looking for  
21 evidence of existing uses. Basically, what  
22 I'm trying to say here is that even if go out  
23 and we find that a water doesn't meet the  
24 depth criterion for attaining whole body



1       contact recreational use, you can't ignore  
2       evidence that it occurs if its - if you  
3       actually see people engaging in a swimming  
4       activity in water that's shallower than that  
5       depth. So if - if we were actually to observe the use  
6       in action at the stream, obviously we would  
7       record that and that would be - fulfill the  
8       test for attaining a whole body contact  
9       recreational use. So far, we haven't seen  
10      that happen, but the test does require that we  
11      look for it. Depth criteria  
12      in a protocol is that any deep - any portion  
13      of the stream that's at least one meter in  
14      depth would qualify for being attainable for  
15      whole body contact recreation or any overall  
16      average depth of at least one-half meter would  
17      qualify for that water body. Go ahead. These  
18      are the actual waters that we've targeted for  
19      UAA's. These are the ones that we're begging,  
20      pleading, borrowing whatever we can resources  
21      to try to get out and try to - and - and  
22      determine if these waters are actually  
23      attainable for whole body contact recreational  
24      use. It includes five hundred fifty-four

1 streams and I've put a figure up here to just  
2 kind of help us all engage it - how many miles  
3 it would be. Taken five hundred fifty-four  
4 and multiplying it by five because I think five  
5 is what the average classified water length is  
6 in the State of Missouri so it'd be about  
7 twenty-seven hundred miles of waters we're out  
8 trying to look at and determine if they're  
9 capable to sustaining a swimming use. The  
10 mostly Class C streams - they're just a few  
11 Class P waters that are actually being looked  
12 at. And of those streams there's one hundred  
13 ten that are being - receiving effluent from  
14 public operated treatment works, whether they  
15 be municipalities or districts that own  
16 treatment systems. Two hundred twenty-three  
17 are streams receiving effluent from privately  
18 owned wastewater treatment plants. These  
19 would be domestic type facilities that treat  
20 human sewage. And then there's two hundred  
21 twenty-one streams that receive no points for  
22 us, but do receive - potentially receive  
23 non-point source run-off from livestock  
24 operations. I know you can't read this and

1       that's not really the point I'm trying to get  
2       at. I'm - I'm wanting you to take a look at  
3       the colors in this - this table here. This is  
4       the start of our - - awards that we're  
5       targeting for UAA's. The ones color coded in  
6       red are the ones that have actually benefited  
7       from a UAA, or at least have a UAA submitted  
8       to the Department. Those color - color coded  
9       in orange - doesn't really - not too much  
10      orange on this slide, but the next color down  
11      is orange - are the ones that have been  
12      assigned to somebody to do a UAA or someone  
13      has stepped forward to do a UAA on this  
14      stream, but has not yet submitted it to the  
15      Department. The next color down is kind of a  
16      blue - light blue-green color. Those are the  
17      ones we'd like to see UAA's done. We've kind  
18      of prioritized those as very important.  
19      Basically, all the ones in red, orange and  
20      green or light green, are the ones that make  
21      up the five hundred fifty-four waters that I  
22      just mentioned earlier. All the other waters  
23      in on this list are - are - make up part of  
24      that nine hundred eleven waters that we

1        mentioned to the Commission earlier that  
2        receive some kind of a domestic wastewater  
3        treatment wastewater and we were not - we're  
4        not targeting some of those because they're  
5        Class P waters, which are evidently capable  
6        of supporting a swimming use and there's  
7        really no sense in our mind to do a UAA on  
8        those. Go ahead. This is just a shot of the  
9        - the listing that appears on our website.  
10       Course there's many, many pages of this. This  
11       is just one page that shows all the colors  
12       kind of listed there so if somebody wanted to  
13       find a - whether or not a UAA has been  
14       conducted on a water of their interest, they  
15       can go on to these - this website. It's  
16       listed in - in - by county. You can go down  
17       to the county of your interest and see if your  
18       water body is listed there and if it's in a  
19       color coded red, it means a UAA's been  
20       submitted. Again, orange - it's been assigned  
21       to somebody. Blue-green - it means it hasn't  
22       been assigned, but we'd sure like someone to  
23       try and get it done and staff will try to get  
24       it done before July 14th, if possible. And if

1       it's - if it's white on that chart, it means  
2       it's not been assigned to anybody and likely  
3       will not be assigned. This is a flowchart.  
4       Kind of show you what's happening - happening  
5       within the office and where UAA's are coming  
6       from. The boxes on the right hand side of  
7       that slide show the various groups and  
8       individuals that are doing UAA's in the State  
9       of Missouri, at least what we're aware of.  
10      The top - our DNR staff - we have various DNR  
11      staff from various programs involved with this  
12      effort. We also have Tetra Tech, who's got a  
13      contract with EPA to do some work on various  
14      types of things. One being UAA's and they're  
15      submitting a number of those to us. The  
16      Environmental Resource Coalition is under a  
17      grant to do some of this work among other  
18      types of water quality studies for the State  
19      of Missouri. And then, of course, there's  
20      other individuals - municipalities and others  
21      that are interested doing some themselves,  
22      which are submitting UAA's. All of these come  
23      into the office to one individual. Her name  
24      is Stacia Bax and she's - she's sort of the

1        hub of this whole effort and she's really busy  
2        these days and she's going to even get busier  
3        as days go forward. She gets a lot of help  
4        from some of us. She gets help from  
5        Environmental Protection Agency as an advisory  
6        capacity. She also gets help from her  
7        supervisor, Mohsen Dkhili, and myself just to kind of  
8        help her with the workload from time to time,  
9        maybe take a few phone calls and that sort of  
10       thing. Laura Teasley, up in the top, she's  
11       our database coordinator in the - in the  
12       Department. A lot of this stuff goes onto the  
13       website so without her help, we couldn't - we  
14       couldn't make this effort work for everybody  
15       so she certainly deserves our thanks. At the  
16       bottom of the slide is a - is the UAA review  
17       committees. We've formed two of them to help  
18       us through this effort. This is the group of  
19       individuals that review the completed UAA's  
20       within the office and make a final  
21       recommendation to - to Ed Galbraith, who will  
22       - who will decide whether or not it actually  
23       it has an effect on the rule. Go ahead.  
24       True. Good point. I'm going to go into some

1 slides. Kind of show what we've been seeing  
2 on some of the UAA's - give you an example.  
3 The first thing that happens  
4 when we start field preparation for a UAA, we  
5 make sure we've identified the right water  
6 body by some identification code. We have a  
7 system by which all classified waters are  
8 identified by a code. We make sure we - we -  
9 we know how to track that. There's a  
10 pre-survey meeting with MDNR. If - if it's  
11 someone outside of DNR that wants to do one,  
12 we certainly encourage them to come in and  
13 meet with us. Make sure that - that they  
14 understand the protocol, they have the  
15 identification numbers that they need and  
16 they've looked at some water state information  
17 to help them focus on - on what section of the  
18 stream is really important for them to do. We  
19 make sure that it's within the recreational  
20 season. Certainly we're within that right now  
21 and we want to make sure that it's within base  
22 low conditions and we've had pretty good luck  
23 this summer trying to do this work in-between  
24 rainfalls. We require that there be three

1 points of observation within the stream.  
2 Although we have find it to be challenging at  
3 times, some of the shorter segments to find  
4 three points or sometimes you can see the  
5 entire stretch within one big - one location.  
6 So sometimes we'll make - may make an  
7 exception where you can make a reasonable  
8 judgment of the characteristics of the stream  
9 within less than three points. We use  
10 publicly accessible points if - if we can. If  
11 we have to find another point, we can  
12 sometimes go to landowners and ask for  
13 permission to go onto their property to get  
14 another point, but we try to keep that to a  
15 minimum. We have very little time to do these  
16 so, sometimes, we'll just walk away from a  
17 stream and not complete a UAA and not make any  
18 recommendations on it if it requires more than  
19 just publicly accessible points. We're  
20 focusing, again, on classified water bodies  
21 and - and some - some cases where  
22 sub-segmenting the water body, in other words,  
23 it may be classified for seventy miles and we  
24 may actually only do five, ten, or fifteen



1       miles of that actual stream where we believe  
2       the whole body contact is least likely to be  
3       attainable. One of the examples I wanted to  
4       show you is Walnut Creek. Walnut Creek flows  
5       north of Knob Noster in Johnson County. Flows  
6       northward into the Blackwater River, which is  
7       around the top of that slide. Kind of flows -  
8       Blackwater starts up - just north of  
9       Warrensburg and kind of flows to the northeast  
10      and joins with Walnut Creek up there - with  
11      that - where that top most X is. This stream  
12      received six observation points shown by the  
13      Xs right there and, I think, it's eleven  
14      miles long. Go ahead, Ed. I know it's going  
15      to be difficult for you to read this, because  
16      it's difficult for me to, at this point. But  
17      I wanted to show you some of the information  
18      that's presented on the - on the - the sheets.

19      Basically, we need to know who's doing the -  
20      conducting the UAA, why they're conducting,  
21      what criterion they're using to make their  
22      judgments. Locational data is tracked by  
23      longitude, latitude, or a legal description so  
24      we know exactly where the start and stop of

1       the segments are. We ask that a signature be  
2       made at the bottom of the - the - the page so  
3       that we know for certain that the individual  
4       has completed the UAA and feels it is fully -  
5       contains all the information required by the  
6       protocol. Go ahead, Ed. This is the first  
7       sheet of - Data Sheet B - getting into more  
8       detailed information about the segment itself.

9       It's basically providing some of the  
10      characteristics of the stream - and I'm having  
11      a hard time seeing that - I mean - even my  
12      glasses. But some of the information and, you  
13      know, observations we make about what people  
14      are actually using it for. In the lower part  
15      of that slide, if none of those boxes are  
16      checked, it basically indicates that we didn't  
17      see any people actually out there using the  
18      stream, but, again, that doesn't - that isn't  
19      the only test. It's good to know, obviously,  
20      for people using it. If you check one of  
21      these boxes, especially swimming, snorkeling,  
22      or any other whole body contact recreational  
23      activity, you can basically injure  
24      use attainability analysis right now because that

1       will qualify it to retain a whole body contact  
2       recreational use designation in our rules.  
3       The second start - part of this page gives us  
4       information, which kind of helps us understand  
5       whether or not we want to go further with this  
6       use attainability analysis. These criteria, or  
7       these data points really don't tell us the  
8       whole body contact recreational use is  
9       attainable, but if you check any of these  
10      boxes, basically, it tells us it may be worth  
11      our while to go talk to the landowner or  
12      resident in the area  
13      END OF TAPE THREE, SIDE B  
14      BEGINNING OF TAPE FOUR, SIDE A  
15      I can't read that - some of the - yeah -  
16      exactly - things that would indicate that  
17      there's high - a high likelihood of some kind  
18      of recreational use activity going on. It  
19      would lead us to want to go do some  
20      interviews. Go ahead. This is the last part  
21      of that one page. This is where we actually  
22      get into depth measurements. We're looking at  
23      the width, length of the stream, as well as  
24      the depth. Again, the protocol indicates that

1       if it's greater than - or at a meter depth  
2       anywhere within that segment or half-meter  
3       average, then it would qualify for being  
4       attainable for whole body contact recreational  
5       use. We look both upstream and downstream  
6       from the point of observation to be able to  
7       get a full characterization, or at least the  
8       best characterization as we can from that  
9       point. Just some additional information that  
10      kind of help us fully understand all the  
11      characteristics of the stream and, again, a  
12      signature at the bottom. This is a - all the  
13      - photographs are required in a protocol  
14      because a picture says a thousand words. And  
15      this is a - I think the third site from the  
16      bottom of the stretch that we're analyzing.  
17      Looking upstream, it's .183 and use - U on  
18      that indicators indicate that's it's upstream  
19      shot. This is the same spot looking  
20      downstream. Go back one. There's some things  
21      I want - that one, thank you - the thing -  
22      it's nice to have some person in the shot kind  
23      of give you size reference, too, exactly what  
24      the size of that stream it. There's also a

1 structure in the background, which, from the  
2 review committee standpoint, that's something  
3 that - that they want to be described on the  
4 form itself. That's exactly what that is.  
5 Any kind of human type features on that stream  
6 or human alterations ought to be described on  
7 the form so that we can assess that has any  
8 bearing on a possible recreational use. Kind  
9 of looks like a boat ramp, but if you looked  
10 in the - some of the slides earlier, it said  
11 that there was a road noticed downstream so  
12 it's probably some sort of road structure. Go  
13 ahead. I threw this slide in here and this is  
14 the same water body. It's on the very lowest  
15 point measured or - or observed on Walnut  
16 Creek. As you see, it's characteristics are  
17 quite different from the previous two slides.  
18 The reason for that is this is right before  
19 the confluence before - with the Black River  
20 and what I suspect is going on here is it's  
21 getting a lot of backwater effect from the  
22 much larger classified stream. So you're  
23 going to find this kind of situation - a lot  
24 of our smaller tributaries where they join up

1       with larger rivers. And I threw this in here  
2       just so that you can kind of think along with  
3       this about exactly what would be the impact of  
4       a situation like this on our use attainability  
5       analysis. We did find the depth obviously  
6       meets one meter at least in this segment, so  
7       that alone would qualify this segment as being  
8       attainable for recreational use. But if this  
9       segment was only one-quarter mile long of  
10      eleven mile stretch, would that warrant full  
11      classification of the entire segment or  
12      designation of the entire segment for whole  
13      body contact recreational use? I mentioned to  
14      you that we are in the process of trying to  
15      sub-segment some of these classified waters  
16      for their uses, but would the Commission want  
17      to sub-segment - a section of a stream that's  
18      only one-quarter mile? Have that designated  
19      separately in your - in the rule as a part  
20      from the other ten and a half or the ten and  
21      three-quarters miles. Just some of the  
22      questions that are coming to our minds as we  
23      go through some of these analyses. So we had  
24      one point of the six points measured on this

1 particular stream that met the depth  
2 criterion. It was this one - just this one  
3 right here. Some of that - I just threw a few  
4 slides to indicate some of the evidence of use  
5 that we're finding on streams. Now these  
6 things do not necessarily indicate that whole  
7 body contact recreational uses are ongoing,  
8 but, again, they're things that if we find  
9 these things, we're going to go look around  
10 for, perhaps, some residents that can help us  
11 understand if the use is actually occurring.  
12 If we find substrate or other conditions that  
13 would make it highly unattractive for swimming  
14 uses, we ask those be described in the forms.  
15 Again, this may not necessarily preclude the  
16 designation of a whole body contact  
17 recreational use depending on how prevalent  
18 these conditions are. Sometimes we find these  
19 segments posted as "No Swimming." Again, this  
20 is not a reason to hold off on designating a  
21 use. Sometimes, swimming uses occur even  
22 though the signage is there. So we have to  
23 protect the use if it does, in fact, occur.  
24 Other signs may be boards along the - the

1 sides of the stream, which would indicate that  
2 people walk the stream on occasion. Again,  
3 these may be just places where people fish,  
4 but it may be reason to ask somebody to be  
5 certain exactly what - what's going on there.  
6 Again, just another sign of people there.  
7 This is a bridge across the stream where an  
8 assessment was done. As I said, we do some  
9 interviews. Basically, when we're out on the  
10 - the sites - if we find some people, we may  
11 stop and ask them questions. But we're not  
12 doing a whole lot of this simply because of  
13 lack of time. And we'd only do this on a rare  
14 occasion where we find a real reason to want  
15 to really to go into further - further  
16 analysis. Go ahead. We have some two copies  
17 of UAA's being submitted to our office. It  
18 goes to the review committee and review  
19 committee makes a recommendation. If they're  
20 unable to find all the information they need  
21 from a form, we will ask for further  
22 clarification from the people that - that  
23 conducted the UAA. We do - we do not make any  
24 changes to any UAA's not conducted by



1           ourselves. Obviously, if it's - if it's a  
2           missing blank or something in the form, we're  
3           going to ask the author to come back and fill  
4           that blank in. Even if it's obvious what the  
5           answer should be. This is how the review  
6           committee's recommendation appears on the  
7           website. It just contains information about,  
8           you know, what we reviewed it for, what  
9           criteria and such, some of the things are  
10          pretty obvious on the UAA itself. But then  
11          towards the bottom is a little recommendation  
12          box and there's not a whole lot of room there.  
13          If you can point that out, Ed. Just - yeah -  
14          that paragraph is probably the most critical  
15          to those who want to understand the basis for  
16          our recommendation. And some cases, you'll  
17          find in the information there it says, "Well,  
18          one out of six sites indicated that there was  
19          sufficient depth for swimming, but there  
20          wasn't any evidence of the use and we're  
21          really not recommending the use designation  
22          for the entire segment just on that one  
23          observation." So, little bits of information  
24          are going to be important right there. But

1       this is going to be what appears on our  
2       website on July 25th. It's going to be a  
3       one-page summary of what - what our  
4       observations and recommendations are.  
5       Basically, this is just segments of that same  
6       form since the first five are so hard to see.  
7       Just kind of give you an indication of some of  
8       the information there. It's all pretty  
9       straightforward. Again, nothing too notable  
10      other than this one paragraph right there, I  
11      think, is where we really want everybody to  
12      help us focus and - and. This is our actual  
13      website. If you're interested in knowing how  
14      to find some of this information, you want to  
15      get to this page, called "Use Attainability  
16      Analysis." It's under the Water Protection  
17      Program website. This portion right here has  
18      various things for people to review. It has  
19      the UAA lists of the targeted water bodies  
20      sorted by different ways. County, by facility  
21      permit number. First two lists up there are  
22      for point source streams and the third one is  
23      for none-point source streams. The fourth  
24      listed there is the one that you want to click

1       on if you want to actually look at a UAA that  
2       has been conducted. If you click on that, it  
3       shows you this. This is a table of the  
4       counties in the State of Missouri. This isn't  
5       all of the counties, by the way, as you can  
6       tell, but just a portion of them. Those that  
7       have dates by them are the ones that have  
8       UAA's conducted and information on our website  
9       so if you were to click on one of those, you  
10      would come up with a page like this. This is  
11      the Johnson County water body UAA page. This  
12      is not all the ones conducted or shown in  
13      Johnson County, but a portion of them. As you  
14      can see down towards the bottom is Walnut  
15      Creek that we just discussed. It does have a  
16      UAA on it and if you clicked on it, you would  
17      find that page that we showed you earlier. Go  
18      back to that one. I threw this up. This is  
19      actually Lafayette County, but if - if staff  
20      recommendation actually appears on the page  
21      then you'll see over on the right hand column  
22      another document that shows - it'll tell us -  
23      tell you whether or not we're recommending  
24      retaining the use or removing the use. If you

1 clicked on that, you'll find the - the  
2 committee - the review committee's  
3 recommendation right there. So, on July 25th,  
4 again, when we hope to have all of the UAA's  
5 reviewed and our recommendations done, you'll  
6 find that all of our recommendations just like  
7 this on our web page. So anybody who wants to  
8 review them can click on that and go through  
9 them. I think this is my last slide. I was  
10 going to end on a note that if we were - if  
11 all the UAA's that we have targeted, all five  
12 hundred fifty-four were successful in showing  
13 that swimming was not attainable in waters  
14 targeted for UAA's, then this basically, you'd  
15 have - what's in blue would be the rest of the  
16 water bodies that would be designated under  
17 the rule for whole body contact recreational  
18 use and the red would be what would be removed  
19 in term of - in terms of mileage. So that  
20 would be the total effect that this UAA  
21 analysis might have. Now what we've been  
22 finding so far, is that our UAA's are coming  
23 in about fifty percent - fifty-fifty. Fifty  
24 percent of them are showing that the use - it

1       seems legitimate to remove the use based on  
2       the protocol, whereas the other fifty percent  
3       indicate that - that by depth, the swimming  
4       use is attainable and should be retained. So  
5       the actual number up there is probably going  
6       to be less, in fact, I'm sure it will be in  
7       terms of our recommendations to the  
8       Commission. But this kind of gives you an  
9       idea of - of total effect, possible effect, of  
10      UAA's on the classified waters in the State of  
11      Missouri. And that's it. I'd be happy to  
12      answer any questions about what we're doing.

13

14      CHAIRMAN HERMANN: That's your - your first  
15      go-around, which you hope to have finished by  
16      July 14th, I think. Okay, but, I guess it's  
17      important for the people to know that there is  
18      additional inclusion or exclusions bacteriological,  
19      socioeconomic. And other  
20      factors that can be considered and should be  
21      considered before a final determination is  
22      made on a stream. Because of constraints of  
23      time, you're dealing, primarily - almost  
24      entirely with depth and depth only and

1 physical evidence.

2 MR. SCHROEDER: That's correct, yeah,  
3 that --

4 CHAIRMAN HERMANN: In the first go-around.

5 MR. SCHROEDER: is much simpler to do  
6 than the other criterion --

7 CHAIRMAN HERMANN: The other criterion of long  
8 range and probably best done by the - by the  
9 operators.

10 MR. SCHROEDER: Right. We - we figure  
11 that some of the urbanized streams or areas or  
12 streams in urbanized areas may - may be good  
13 candidates for criterion six, which is the  
14 social/economic analysis issue.

15 CHAIRMAN HERMANN: Yeah.

16

17 CHAIRMAN HERMANN: You mentioned the one  
18 extreme of the stream, Walnut Creek I think,  
19 which has a quarter of a mile that might be  
20 swimmable than the other five and  
21 three-quarter mile or whatever. Is not -  
22 would that lead to a sub-segment of the - of  
23 the stream and you've heard my sermon before  
24 about the Gasconade River. Why should a

1       hundred thirty-two miles of the Gasconade  
2       River have the same - or Bourbeuse, I'm sorry  
3       - the Bourbeuse River have the same  
4       classification from its mouth to the Meramec  
5       River all the way out to Phelps and Maries  
6       County, where there is no water in the creek  
7       and, I think, three hundred sixty-two days out  
8       of the year. I see no reason - I mean, I've  
9       talked to John about that before and John  
10      gives me one of these answers that I don't  
11      understand a place up here. But, if you're  
12      talking about sub-segment in the stream, I  
13      think there are certainly a lot of streams in  
14      our water quality standards that should and  
15      could be broken down. Now, maybe Walnut  
16      Creek, that might be listed for P-1 whatever  
17      mile section, I don't know.

18      MR. SCHROEDER: It would certainly  
19      qualify for a Class P or P-1 --

20      CHAIRMAN HERMANN: P-1. Yeah --

21      MR. SCHROEDER: which stands in  
22      backwaters off --

23      CHAIRMAN HERMANN: backwaters off of Class P  
24      stream.

1 MR. SCHROEDER: The other - the other  
2 thing that's kind of important to note is in  
3 situations like that where it may be warranted  
4 to remove the use in the upper segments where  
5 there's no depth or there's insufficient depth  
6 for recreational purposes - by removing the  
7 depth right before it enters a Class P stream  
8 where there is a classification or designation  
9 for a whole body contact, you know, certainly  
10 anybody discharging above that - in that  
11 tributary above that is going to have to  
12 disinfect with or within two miles of the  
13 Class P stream so by virtue of that rule, of  
14 the two mile disinfection rule, that segment's  
15 going to get protected anyway.

16 CHAIRMAN HERMANN: Disinfect unless?

17 MR. SCHROEDER: Unless you can show a  
18 study that it's not going to effect. Exactly.

19

20 COMMISSIONER PERRY: Unless you can --

21 MR. SCHROEDER: Unless you can - do - do  
22 a study to show that disinfection is not  
23 necessary to - to remain in compliance with  
24 the standard. So, either way you go, you're



1 still protecting the whole body contact  
2 recreational use --

3 CHAIRMAN HERMANN: For the - for the stream to  
4 be in - in compliance. Yeah. Not the  
5 discharge, the stream.

6 COMMISSIONER PERRY: Okay - two miles above  
7 the Class P or Class C?

8 MR. SCHROEDER: Yeah, two miles above the  
9 segment that's classified or designated for  
10 whole body contact recreational use. Class P  
11 waters, by virtue the fact that they're larger  
12 streams, will almost always be - be  
13 supportable for swimming purposes. So I doubt  
14 that you'll see very many, if any, Class P  
15 waters be recommended by staff for removal of  
16 a whole body contact recreational use. So  
17 Blackwater River, which is a Class P water,  
18 will have a, by our recommendation, retain a  
19 whole body contact recreational use. The  
20 quarter-mile of Walnut Creek right - right  
21 before the confluence with the Black River, we  
22 may very well recommend to the Commission,  
23 "Don't designate, don't sub-segment. It's  
24 only a quarter-mile or half-mile long." And

1           it'd be ridiculous for us to come to the  
2           Commission with about a thousand or five  
3           hundred quarter-mile of half-mile segments or  
4           something for sub-segmentation, but rather you  
5           may want to recognize the fact that because  
6           it's right next to a Class P water that has to  
7           be protected for whole body contact  
8           recreation. Anybody discharging to Walnut  
9           Creek and above is within two miles of  
10          Blackwater River will likely have to disinfect  
11          anyway. So Walnut Creek, from their - their  
12          point down, is going to be protected for whole  
13          body contact by the virtue of the two-mile  
14          rule.

15         COMMISSIONER PERRY: So, in that case, are  
16         they going to be taking pictures of the stream  
17         into which they - that's two miles away or of  
18         their mile and a half?

19         MR. SCHROEDER: I'm not sure I'm  
20         following your question.

21         COMMISSIONER PERRY: Okay, in the example you  
22         just gave, they were - what - a mile and a  
23         half upstream from a Class P stream.

24         MR. SCHROEDER: Yeah, in the example I

1       gave you - if someone were, let's say half -  
2       one and a half miles up, a tributary that's  
3       not classified for whole body contact  
4       recreation from a stream though that is, they  
5       would still have to disinfect by the rule,  
6       unless they could show that their disinfection  
7       was unnecessary to protect whole body contact  
8       recreation use down the stream. In other  
9       words, the protection of downstream use is  
10      important. You know, wherever we issue a  
11      permit, we have to look downstream to see  
12      where the classifications or designations  
13      occur in tributaries downstream in order to  
14      ensure that we're protecting those uses. So  
15      there's that - through that analysis,  
16      sometimes these kind of situations really  
17      don't pose a practical question, in terms of  
18      whether or not, you know, there's a need to  
19      designate it. Just something to think about.

20

21      MR. GALBRAITH: If I might clarify one point  
22      about Class P streams. Certainly, there are  
23      probably some Class P streams that would -  
24      where - where the whole body contact use is

1       not attainable. Under other criteria, they  
2       would fill - what I - what I understand is  
3       that we're not targeting Class P streams  
4       because since we're focusing on the depth  
5       criteria only, they have a very low chance of  
6       - of - of there being any difference as a  
7       result of, you know, the depth is going to  
8       show, you know, whole body contact. But,  
9       that's not to say that there might not be  
10      other criteria that - a more - a more in-depth  
11      study might not show that the use cannot be  
12      attained.

13      CHAIRMAN HERMANN: I guess I was a little  
14      confused by your "No Swimming" sign. If it's  
15      on private property, and I know of a goodly  
16      number of water supply reservoirs in the north  
17      part of the state that have abandoned - been  
18      abandoned as water supply units. It's all  
19      private property owned by usually the cities.  
20      And they post "No Swimming" signs at those -  
21      around those lakes. Now, should we not honor  
22      that requirement of the - of the landowner?  
23      Should we put in "Swimming Allowed?"

24      MR. SCHROEDER: Well, by virtue of

1       designating it for whole body contact  
2       recreation, we aren't obviously saying that  
3       swimming should occur there or that it can.  
4       But the protocol is - and it's silent on this  
5       issue. And if the Commission has a desire to  
6       direct staff on how to look at it, we'd  
7       certainly be welcome to - to - to understand  
8       your - your desires there. But since it's  
9       silent on the issue, we feel that we're  
10      obligated to go ahead and - and test it  
11      according with the depth criterion and apply  
12      that alone and so, these lakes and/or other  
13      streams that sometimes are posted on private  
14      property, they meet the depth criterion and so  
15      we're probably recommend that they be  
16      designated. You know, the - the - the problem  
17      is in some cases, I mean, if it's got a very  
18      tall fence around it and it's very well  
19      protected, that may be a different question,  
20      but certainly in streams that have access to  
21      the public, one sign - that someone I think  
22      said even earlier today - isn't going to stop  
23      them, you know, or stop some people from  
24      swimming. And the question is for those

1 people who are willing to disobey landowner's  
2 wishes, and maybe even break the laws of  
3 trespassing, does the Commission want to, you  
4 know, expose them to bacterial, you know,  
5 bacterial concentrations in the water  
6 themselves? So, that's the question to you, I  
7 mean, if it's something you guys want to take  
8 further look at, we'd be happy to.

9 COMMISSIONER HARDECKE: Were you --

10 CHAIRMAN HERMANN: Is this like home? Do you?

11 COMMISSIONER HARDECKE: You say it's a - are you  
12 talking about these on lakes, as well?

13 MR. SCHROEDER: No, actually we're not  
14 targeting any lakes. I threw that up there  
15 because that's the only slide I had that had a  
16 "No Swimming" sign on it, but where we find,  
17 at times, out on a - on the - on the - even  
18 from a publicly accessible point, it's - most  
19 of what we're looking at is private property  
20 up and downstream. And sometimes landowners  
21 will post these - these places and say, "We  
22 don't want people swimming here. It's private  
23 property." So, the question is if - if it's -  
24 if there's a sign there, but we see evidence

1 of swimming use, could be the landowner's  
2 themselves. You know, we would certainly,  
3 again - we'd be looking at the depth criterion  
4 as our primary reason to designate that use or  
5 recommend designation.

6 COMMISSIONER PERRY: You said that the  
7 committee is running about fifty-fifty in the  
8 use. Are we going to have to have a section  
9 of every Clean Water Commission be in appeal  
10 of the committee reviews of UAA?

11 MR. SCHROEDER: Well, as it's turning  
12 out, all of these UAA's are sort of in the  
13 context of a rulemaking and so, when we decide  
14 on the - the validity, I guess, of these  
15 UAA's, it'll come in the context of whether or  
16 not you accept them as a comment that should  
17 affect the way the rule's been written and if  
18 the rule - if any rule - maybe this is  
19 something for Bill to address, but depending  
20 on how the Commission votes on the rule and  
21 the final order of rulemaking, that's maybe -  
22 that maybe where it can be challenged because  
23 the decision we're making based on these UAA's  
24 really manifests itself in terms of a

1 recommendation on a final order of rulemaking.

2 It doesn't - it - so, I don't know. Bill,  
3 maybe you can help us with this.

4 MR. BRYAN: There's something we all  
5 discussed. Phil and I and Amy and Joe  
6 Bindbeutel and Kurt Schaefer, who you met  
7 earlier today. We've talked about this - how  
8 to - how to reconcile that question because  
9 ordinarily, a UAA would be an adjudication,  
10 which is something that - which is something  
11 that would be appealed to this Commission. A  
12 decision that the Department makes based on  
13 particular facts and circumstances would be  
14 appealed to this Commission and you'd make a  
15 decision. Here we are doing it in the context  
16 of rulemaking. I think, ordinarily, it would  
17 probably be something where a person would get  
18 a decision on their UAA and then they would  
19 appeal it to the Commission. I think here,  
20 because of the time frame involved, the  
21 consensus that was reached, more or less, was  
22 that we didn't have enough time to sort this  
23 out and do it any differently than what we had  
24 already anticipated. The way we had already



1        anticipated going would be to just roll it out  
2        into the rulemaking process and take those  
3        comments, make the decision in the context of  
4        the rulemaking, rather than an individual  
5        decision with respect to a stream. But that -  
6        going forward, I think it's likely that's how  
7        it'll pan out.

8        COMMISSIONER KELLY: Okay, is your  
9        adjudication - but what happens to those  
10       people who could be very immediately affected  
11       by this ruling? What is their appeal process?

12       MR. BRYAN: That you could contest the rule.  
13       And I anticipate that there might be a lawsuit  
14       contesting this rule. There might be several  
15       lawsuits contesting this rulemaking in one way  
16       or the other, but a rule has to be based on  
17       the whole record. So that would be the basis  
18       for that lawsuit that the rule - the record  
19       doesn't support the decision. For example, on  
20       a particular UAA, on the designation of the  
21       use or the non-designation of a use. For a  
22       water body, it might be based on Hancock. I  
23       heard some comments about Hancock. Any number  
24       of challenges to that rule could include

1 challenges to a particular finding on a UAA  
2 and the way it's reflected in that ruling.

3 MR. SCHROEDER: And I might add that  
4 after this rulemaking process, if a UAA is  
5 conducted, it will come to the Commission as a  
6 - as a preliminary finding by staff in a  
7 request to you as to whether or not you would  
8 - would like for us to roll it into a future  
9 rulemaking. So it goes into, what we call the  
10 tri-annual review of the water quality  
11 standards. But, in the future, after this  
12 rulemaking process, it'll come to you as,  
13 "Here's the UAA's that were conducted the last  
14 couple of months. We'd like to know whether  
15 or not you think that they warrant moving it  
16 into a rulemaking process and if you say yes,  
17 then we just put it in the stack with the rest  
18 of the recommendations for water quality  
19 standards revisions for that next rulemaking  
20 that comes into the future. And that would be  
21 a good time to - to begin dialogue with the  
22 public on whether or not they also agree with  
23 us that - that removal of the uses is  
24 warranted based on the UAA. So, things will

1 be different in the future.

2 CHAIRMAN HERMANN: And, again, there are -  
3 Jones Creek will be indicated with an X or  
4 Class A - Class B recreational use until a  
5 future UAA goes through the rulemaking process  
6 and takes that off.

7 MR. SCHROEDER: That's right.

8 MR. GALBRAITH: And not to further the  
9 discussion, but maybe something that, I think,  
10 we'll want to consider at our September  
11 meeting is, you know, the blue is all the  
12 waters that won't even get a UAA, okay? So,  
13 we've got to make it clear that there's more  
14 bites of the apple and we've got - I think the  
15 Commission needs to have a - a clear policy on  
16 how we're going to handle permit decisions and  
17 other types of decisions where we have a UAA  
18 in hand, but we don't have a rulemaking  
19 completed. And I - and I think that's  
20 something that's staff are going to be working  
21 on and - and presenting to you as a -  
22 something for your consideration in - in  
23 September.

24 CHAIRMAN HERMANN: You mean, where's the UAA

1 done?

2 MR. GALBRAITH: UAA's done --

3 CHAIRMAN HERMANN: Where a facility is up for  
4 permit review, but we're back in this variance  
5 business?

6 MR. GALBRAITH: Probably.

7 CHAIRMAN HERMANN: Yeah. Okay. Thank you,  
8 Phil.

10 MR. SCHROEDER: Thank you.

11 CHAIRMAN HERRMANN: Want to talk  
10 about the **Commission appeal procedure**, Bill?

11 MR. BRYAN: No, my understanding is that there  
12 - the legislation has been signed by the  
13 Governor so that that working group is going  
14 to, basically, reconvene. There's going to  
15 need to be some changes to the Commission  
16 appeal procedures that the Core Working Group  
17 came up with so that's on hold.

18 CHAIRMAN HERMANN: The - the - Was  
19 Cauthorn's bill is the one that passed, right  
20 --

21 MR. BRYAN: I believe that's right.

22 CHAIRMAN HERMANN: which brings the final  
23 decision back to the Commission.

24 MR. BRYAN: Yes.

1           CHAIRMAN HERMANN: Okay. How about **Priority**  
2           **Point Process**? Doug Garrett? Tab Twenty.

3           MR. GARRETT: At the request of the Commission  
4           at the last meeting, we prepared a brief  
5           presentation on the Priority Point System that  
6           we use for rating the applicants for the State  
7           Revolving Fund program. Priority Point System  
8           you can find in Tab Twenty in your booklets.  
9           The regulation, which is Chapter Four for the  
10          current Priority Point System was developed in  
11          the mid-'80's during the construction grant  
12          program era and it's been used continuously  
13          since then. The staff or the section that  
14          actually would do the groundwork at that time,  
15          monitor the projects - the staff that handles  
16          the SRF projects now, do not calculate the  
17          priority points. That has been handled by our  
18          water quality section and it continues to be  
19          done by them. So I have begged Stacia to kind  
20          of run through what she goes through when she  
21          assigns priority points. And I know she's  
22          busy with a lot of other things, but really  
23          appreciate her taking the time.

24          CHAIRMAN HERMANN: Well, we indulge Stacia.

1       If this is twenty-five years old to her  
2       approximately, in that vicinity, Number One, I  
3       guess, did you get a copy of a letter from - I  
4       know Ed did because --  
5       MR. GARRETT:   From MSD.  
6       CHAIRMAN HERMANN:   From MSD, yeah.  
7       MR. GARRETT:   Yes.  
8       CHAIRMAN HERMANN:   That, I think succinctly,  
9       says probably, in one of their last  
10      paragraphs, what my problem was and I - and I  
11      described a couple of instances, which we've  
12      had in the IUP in the past, and that was two  
13      towns situated adjacent to each other, with a  
14      common city limits, discharging to the same  
15      stream and one might have priority points of  
16      fifteen or something and the other town has  
17      priority points of two and a half. Something  
18      like that. There's a great disparity in this  
19      and, I believe, Stacia - MSD - they went  
20      through and said, for example, "Mississippi  
21      River Treatment Plant renovation project  
22      received a Priority Point score of 46.18 in  
23      FY04 IUP, but only 2.91 score in the FY05 IUP.  
24      So - and I have a lot of difficulties - for

1 instance, we talked about Sullivan.  
2 Sullivan's on a - on a losing stream. Now, if  
3 you - if you go through the priority points  
4 basis, there's no points awarded if you're -  
5 if you're just charging to a losing stream.  
6 If there's a zero flow on the stream, you get  
7 zero points in the equation.  
8 MS. BAX: There is a special section for  
9 losing streams. They get awarded two points  
10 for that. It's --  
11 CHAIRMAN HERMANN: You get - discharges to  
12 sensitive waters --  
13 MS. BAX: Factor D, yes.  
14 CHAIRMAN HERMANN: Ozark projects and it's  
15 based on 1980 population, which can be  
16 significantly different in most places.  
17 MS. BAX: If I can go through my presentation,  
18 I can explain --  
19 CHAIRMAN HERMANN: Okay, fine. Okay. My  
20 initial question was - maybe to Ed - isn't it  
21 time that we looked at this to see the  
22 appropriateness of it after twenty-five years  
23 and see if maybe there isn't a better way of  
24 doing it? I know we have another ten, eleven

1 months before another IUP, so maybe now's the  
2 time to look at it.

3 MR. GARRETT: That is one of the goals in our  
4 current IUP was to develop this fiscal year a  
5 new Priority Point System that would be based  
6 on a watershed approach and, also, be an  
7 integrated system such that as we get into,  
8 hopefully, more non-point source areas through  
9 the SRF that we would have a mechanism for  
10 also prioritizing those projects.

11 CHAIRMAN HERMANN: Okay.

12 MR. GALBRAITH: That would have to be followed  
13 up by a rulemaking, correct?

14 MR. GARRETT: Yes.

15 CHAIRMAN HERMANN: Stacy?

16 MS. BAX: Good afternoon. I'm just going to  
17 go through the process that I do, which is  
18 just assigning the Priority Point System. The  
19 applications for the State Revolving Fund are  
20 submitted to the Department and gathered and  
21 sent to my section, the Water Quality  
22 Monitoring Assessment Section, particularly my  
23 unit. And the deadline is November 15th of  
24 each year, so we wait a few days after that



1 deadline to make sure we get any that are  
2 postmarked on that day received into the  
3 office. We wait those few days just to make  
4 sure we have them all at the same time to do  
5 them to establish consistent methods and  
6 awarding the priority points. The points that  
7 are given are according to a calculation in  
8 Chapter Four of the rules. There are nine  
9 factors that we consider. One of them is the  
10 receiving stream, which we consider is defined  
11 in Chapter Four "as the immediate water course  
12 into which a discharge flows; however, in  
13 those cases where immediate receiving water's  
14 not classified, a downstream classified water  
15 will be considered to be the receiving water  
16 if the discharge is either within one mile of  
17 a classified water or is further away than one  
18 mile, but has a demonstrated or predicted  
19 impairment on a classified water." And we  
20 consider impairment as a 303 - 303d listing  
21 due to the plants in question. You know, if -  
22 if it's an impairment due to like mercury from air  
23 deposition, that's not considered. It has to  
24 be from that specific plant. Of the nine

1 factors, I'll go through each of them. Factor  
2 A is an expression of the - - of the receiving  
3 stream. It's calculated using USGS gauging  
4 stations and USGS software. If there is not a  
5 receiving - a station on that particular water  
6 body of interest, we look to see if there's a  
7 gauge at water body of a similar geologic and  
8 hydrologic conditions - you know, same  
9 watershed area to see if there would be a  
10 similar calc - or a similar flow measurement.  
11 If there is no information out there, which  
12 often for small streams there isn't, we have  
13 some assumptions. For Class P streams where  
14 there is no data, we assume that a flow of .1  
15 CFS is there. For a Class C stream, we assume  
16 there is no flow, a zero CFS because - just by  
17 definition that it ceases flow during dry  
18 periods, but has pools enough to support  
19 aquatic life. For unclassified waters, we  
20 assume the flow to be zero because it's  
21 assumed that unclassified waters are ephemeral  
22 streams, which dry out during no  
23 precipitation. For lakes - for discharges  
24 into lakes, we give them a value of ten.

1       That's according to the rules. If they do not  
2       improve or eliminate existing discharges,  
3       there again, zero. Factor B is on the  
4       designated uses of a particular water body.  
5       Two points are given each for whole body  
6       contact, drinking water supply and cool water  
7       fishery and one point each is given to the  
8       other uses that are assigned that water body.  
9       The example I have is Maries River in Osage  
10      County has livestock, wildlife watering to be  
11      one point. Aquatic life, which is one point.  
12      Cool water fishery, which is one point. Full  
13      body contact, which is two points and boating  
14      and canoeing, which is one. So that would be  
15      a total of six points for that factor - for  
16      that facility that discharges to the Maries  
17      River in Osage County. If it does not improve  
18      or eliminate discharges, it's getting a zero.  
19      For Factor C, if it's in the Ozarks area, it's  
20      given two points. If it's not in the Ozarks,  
21      it's zero. And according to definition, it's  
22      based on geologic factors and we have a map  
23      that shows the area where that occurs. Factor  
24      D is for sensitive areas and two points each

1       are given for losing streams and we determine  
2       that by looking in our Table J and we also  
3       have a mapping program that has the most  
4       recent data from our geologic survey folks, so  
5       we get the most recent data that they have for  
6       any streams that aren't even listed in Table  
7       J. Two points also for an outstanding  
8       national resource water or lakes or  
9       metropolitan discharge stream. Factor E is  
10      the most recent census data. We do not use  
11      the 1980 data. We use the most recent, so,  
12      right now, it's 2000. Or the population  
13      equivalent of the area to be effected if only,  
14      say a city is annexing the sub-division and  
15      only that sub-division is being affected, that  
16      population equivalent of that sub-division  
17      would be the population we would use. We  
18      won't use the entire city population. Factor  
19      E is known or potential problems from  
20      industrial discharges. If there is a listing  
21      on the 303d list for a particular industrial  
22      discharge, that is considered a known problem  
23      and given those points. How we determine if  
24      it has potential problems? If we look on our

1 discharge monitor report database that the  
2 facilities submit the information of  
3 violations, if there is any kind of  
4 violations, we have that to indicate it's a  
5 potential problem. Factor G is the average of  
6 the monthly average concentrations of  
7 biochemical oxygen demand UOD5 and milligrams  
8 to be in excess of permanent limits from the  
9 existing treatment plant to be approved.  
10 Basically, we look at that same database, go  
11 through there for a period of the last five  
12 years and any value that's exceeding the  
13 permanent limit, we take note of that and  
14 whatever - like their limits thirty milligrams  
15 per liter. If they had a thirty-five, that'd  
16 be five we'd write down and any associated  
17 numbers like that. Average those and that  
18 would be the number put into that factor. An  
19 example I gave in my presentation was if they  
20 had a limit of thirty and they had DMR values  
21 of twenty, thirty-five, twenty-two,  
22 forty-seven, twenty-nine, and thirty-one,  
23 Factor F would equal 7.7 because it had an  
24 exceedance of five, seventeen and one. Factor

1       H - oh, also if there's just one exceedance of  
2       BOD, part of the rule also says that we can  
3       consider that any lack of proper operation and  
4       maintenance we consider if they just had one  
5       exceedance in the last five years to be a lack  
6       of operation and maintenance. For Factor H,  
7       it's an estimated effluent flow expressed in  
8       cubic feet per second and this is based on a  
9       population. It's just a calculation from that  
10      number, assuming one hundred gallons of  
11      effluent per capita per day. Factor J is  
12      associated with the ability to meet bacteria  
13      limits, eco region type and whole body contact  
14      designation. We've given five hundred points  
15      if they've had a bacteria exceedance and  
16      discharge to whole body contact area and fifty  
17      points if they're in the Ozarks and five  
18      points if none of the - other criteria apply.  
19      Factor V is the last one. It is the impact of  
20      existing facility to be improved or eliminated  
21      by the proposed grant on a receiving water  
22      body and we have some stream survey data  
23      conducted by staff on the water body  
24      particular plants discharge to. And from that

1        information, we - they mark how many miles of  
2        classified and non-classified waters are  
3        either affected or precluded by that treatment  
4        plant. And we use that mileage associated  
5        with the points that are assigned in the rule  
6        to get the value for Factor V. That's  
7        basically how the points are calculated. We  
8        use a spreadsheet to put all these numbers in  
9        it, have our comments in there, have a little  
10       explanation of what the improvements will be  
11       and we send that list down to the SRF folks  
12       for them to include in the IUP. Specifically  
13       on example of MSD, I looked up some of our  
14       historical data and for the fiscal year '04  
15       IUP, the plant that was looked at was a plant  
16       that discharged to the Meramec River. And for  
17       that year, all of MSD's plants were given the  
18       same value, which is why it was given that  
19       number. In the fiscal year '05 IUP, the MSD  
20       plant at the Missouri River was specifically  
21       looked at in their specific situation so the  
22       Missouri River was looked at, the specific  
23       population and flow and that is why the  
24       numbers are different. I have the actual

1        numbers we used in the calculations, if you  
2        like.

3        CHAIRMAN HERMANN:  MSD only has one plant that  
4        discharges to the Meramec River, which will  
5        soon disappear.  Every other plant that they  
6        have discharges either to the Meramec or the  
7        Mississippi Rivers.  So that rating doesn't -  
8        based on the Meramec River, doesn't make any  
9        logical sense.  Now, if you got an unsewered  
10       community - they're unsewered so they get  
11       zero, right?  They're not improving or  
12       eliminating a treatment facility.  They don't  
13       have a treatment facility, so you get zero.  
14       Now if they put one, they're going to  
15       discharge to a - an unclassified stream.  They  
16       get zero for unclassified stream.

17       MS. BAX:  We - well, at least I consider them  
18       to be improving the situation.  So I give them  
19       points according to where the proposed plant  
20       would be.  We have several cases where plants  
21       that are - cities that do not have any plants  
22       on them now or that service the area --

23       CHAIRMAN HERMANN:  If they don't have a plant  
24       --



1 MS. BAX: having given points.

2 CHAIRMAN HERMANN: they don't have any

3 exceedances.

4 MS. BAX: Well, that may be.

5 CHAIRMAN HERMANN: So they don't get a - they

6 get zero for exceedances.

7 MS. BAX: That may be.

8 CHAIRMAN HERMANN: I personally think the

9 whole Priority System Point System needs a

10 fresh look and a re-assessment as to the

11 applicability in our present day conditions

12 and the conditions of the streams that we're

13 dealing with. Need direction on that, Ed, or

14 --

15 MR. GALBRAITH: I think I just got it.

16 CHAIRMAN HERMANN: Okay.

17 MR. GALBRAITH: Fresh look. Got it here.

18 CHAIRMAN HERMANN: In an attempt to be fair to

19 all communities and public entities of the

20 state and also to unconfuse the Chairman, I

21 think we could have a much fairer assessment -

22 or application of priority points in order to

23 take care of the extreme cases where you do as

24 these points would consider, you do have

1           exceedances and - and needs to be addressed  
2           and maybe that's the best place to put money  
3           for that particular application than the  
4           unsewered community. That's been a sore point  
5           ever since I've been around. Ever since the  
6           state grant system where we went back to the  
7           old thirty-thirty grants back in the late  
8           '50's. Unsewered communities never got a fair  
9           shake. I - I'd just like to see a fresh look  
10          and an update on the - on the system. I  
11          recognize what you're dealing with. It's the  
12          printed word, Stacia, and --

13         MR. GARRETT: I don't think you'll get any  
14          argument out of when's the last I worked with.

15                It needs to be updated and, you know, we do  
16          need to - to figure out a way to simply  
17          address those errors such as the unsewered  
18          communities --

19         CHAIRMAN HERMANN: Yeah.

20         MR. GARRETT: in a fair manner.

21         CHAIRMAN HERMANN: Right. Right. And, also,  
22          as this thing is attempting to do, put points  
23          where an improvement would really do some good  
24          in the improvement of the quality of the

1 streams. That would be the emphasis. Thank  
2 you. Any other questions of Doug or Stacy?  
3 Thank you. I think on the advice of our  
4 Director, we got a **Combined Sewer Overflow**  
5 **Update**, a **Water Quality Review Sheet Permit**  
6 **Backlog** update and **Ozark Clean Water** - I think  
7 we talked about that. Does it need to be  
8 addressed now?

9 MR. GALBRAITH: I don't need to address that  
10 today. I don't believe there's anybody here  
11 that wanted to talk about that. I hope I'm  
12 not wrong. But in the interest of time, we  
13 can be happy to table for that for another - I  
14 think the CSO and Water Quality Review Sheet  
15 will just take a few moments each.

16 CHAIRMAN HERMANN: Table those three. **Budget**  
17 **or Legislative** - Scott's not here.

18 MR. GALBRAITH: Scott's not here. No, I don't  
19 have anything at this time.

20 CHAIRMAN HERMANN: What about **Comment and**  
21 **Correspondence**? Anyone? Have any public  
22 comment? Public correspondence? Bearing  
23 none, we'll move to the **Director's Update**.

24 MR. GALBRAITH: We had a very successful Clean

1 Water Forum, I thought, on May 25th. Very  
2 good attendance, a lot of discussion, a lot of  
3 good ideas. I'll be providing the Commission  
4 with a more full report after our next  
5 meeting, which is - is in - well, in our - at  
6 our meeting in September. Our next meeting is  
7 scheduled for --  
8 END OF TAPE FOUR, SIDE A  
9 BEGINNING OF TAPE FOUR, SIDE B  
10 will be - for sure, we'll be talking about  
11 fees, both primacy fee and water permit fees,  
12 as well as - we'll probably have some  
13 discussions on Water Quality Review Sheets.  
14 That's - the rest of the agenda is still  
15 coming together.  
16 CHAIRMAN HERMANN: And it's July 27th?  
17 MR. GALBRAITH: July 27th.  
18 CHAIRMAN HERMANN: You'll let us know the  
19 time?  
20 MR. GALBRAITH: You bet.  
21 CHAIRMAN HERMANN: **Future meetings.** September  
22 7th, Holiday Inn South - South County Center,  
23 I'm sorry. That's on South Lindbergh, so I  
24 don't go to the wrong one again. And future

1 meetings, we need a location for November 2nd.  
2 Suggestions? (Off microphone) Fishing's no  
3 good down at Roaring River at that time, is it  
4 Bill? (Off microphone) Yeah, September 7th.  
5 We'll have the final on the rule, yeah, so we  
6 probably best hold that in Jeff City, right?  
7 MR. GALBRAITH: Well, that's - that's, you  
8 know, we're going to St. Louis. Unless you  
9 want me --  
10 CHAIRMAN HERMANN: Oh, I'm sorry. That's  
11 September.  
12 COMMISSIONER PERRY: September 7th.  
13 (Off Microphone)  
14 CHAIRMAN HERMANN: Could be a long, cold drive  
15 going to one of the corners of the state. Is  
16 it beneficial to stay in Jeff City or  
17 Columbia?  
18 MR. GALBRAITH: It --  
19 CHAIRMAN HERMANN: I'd say the lake, but it's  
20 too cold down there then.  
21 MR. GALBRAITH: Too cold to do anything.  
22 CHAIRMAN HERMANN: Those ponds will be frozen  
23 over so our golf balls will bounce across on  
24 the golf course.

1 MR. GALBRAITH: Well, we sure would like - we  
2 wouldn't mind hosting the Commission in our  
3 new building.  
4 CHAIRMAN HERMANN: That's right, yes. Any  
5 objections to November 2nd at new DNR palace?  
6 Okay.  
7 MR. GALBRAITH: I'm not sure what that is.  
8 CHAIRMAN HERMANN: You'll furnish directions  
9 on how to find it --  
10 COMMISSIONER PERRY: Where is it?  
11 CHAIRMAN HERMANN: this time so I won't get  
12 lost in the prison or other places.  
13 COMMISSIONER HARDECKE: It's in the new  
14 environmental --  
15 CHAIRMAN HERMANN: Anything else to bring before the  
Commission? Bearing  
16 nothing, this meeting is adjourned.

Respectfully Submitted,

Edward Galbraith  
Director of Staff